



# International Migration Policy Report: Responsibility Sharing for Large Movements of Refugees and Migrants in Need of Protection

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A report of the  
Scalabrini migration study centers  
June 2017

Asia | Africa | Europe  
Latin America | North America




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**Scalabrini migration study centers**

The Scalabrini migration study centers consist of the Centro de Estudios Migratorios (CEM) in Brazil, the Centro de Estudios Migratorios Latinoamericanos (CEMLA) in Argentina, the Centre d'Information et d'Études sur les Migrations Internationales (CIEMI) in France, the Center for Migration Studies of New York (CMS) in the United States, the Centro Studi Emigrazione Roma (CSER) in Italy, the Scalabrini Institute for Human Mobility in Africa (SIHMA) in South Africa, the Scalabrini International Migration Network (SIMN) in the United States, and the Scalabrini Migration Center (SMC) in the Philippines.

This report was edited by J. Kevin Appleby, senior director for international migration policy for CMS and SIMN, and by Donald Kerwin, executive director of CMS. The editors would like to thank Fr. Leonir Chiarello, c.s., executive director of SIMN, for his leadership and support during the process.

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 "A boy walks home to camp Jamam, South Sudan."



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# 1 Responsibility Sharing for Large Movements of Refugees and Migrants in Need of Protection

Scalabrini migration study centers

## Introduction

The 2017 *International Migration Policy Report* is the first in an expected series of annual reports on international migration policy and refugee protection by the global network of think tanks or study centers founded by the Congregation of the Missionaries of St. Charles – Scalabrinians. These institutions are members of the Scalabrini International Migration Network (SIMN). The Scalabrini migration study centers consist of the Center for Migration Studies of New York (CMS) in the United States, the Scalabrini Migration Center (SMC) in the Philippines, the Scalabrini Institute for Human Mobility in Africa (SIHMA) in South Africa, the Centro de Estudios Migratorios Latinoamericanos (CEMLA) in Argentina, the Centro de Estudios Migratorios (CEM) in Brazil, the Centre d'Information et d'Études sur les Migrations Internationales (CIEMI) in France, and the Centro Studi Emigrazione Roma (CSER) in Italy. The purpose of these reports will be to focus on pressing global migration and refugee protection challenges in all parts of the world and to offer policy suggestions to address them.

The inaugural issue will focus on global responsibility sharing for large movements of refugees and migrants, a timely issue given the recent adoption of the New York Declaration on the Large Movement of Refugees and Migrants at the United Nations. This report also considers some of the issues which should be addressed during the deliberations on the Global Compact on Responsibility Sharing for Refugees and the Global Compact on Safe, Orderly, and Regular Migration.

In his address to the members of the diplomatic corps accredited to the Holy See in January of 2016, His Holiness Pope Francis spoke of the connectedness between nations and how the global migration crisis can be solved only through the collaboration of the entire international community. “As things presently stand,” the Holy Father said, “there is no place for autonomous solutions pursued by individual states, since the consequences of the decisions made by each inevitably have repercussions on the entire international community. Indeed, migrations, more than ever before, will play a pivotal role in the future of our world, and our response can only be the fruit of a common effort respectful of human dignity and the rights of persons.” The 2017 *International Migration Policy Report* by the Scalabrini migration study centers explores the degree to which nations make “common effort” to address large movements of migrants and refugees around the world and recommends how they can collaborate more effectively.

The papers in this volume are produced by Scalabrini study centers in Buenos Aires, Argentina; Cape Town, South Africa; Manila, Philippines; New York City, United States; Paris, France; Rome, Italy; and São Paulo, Brazil. They highlight and analyze large movements of refugees and migrants in their parts of the world: Africa, Asia, Europe, Latin America, and North America. They offer

comprehensive policy responses to each of these movements, consistent with the protection of human rights and Catholic teaching.

In his paper, *Rohingyas: The People For Whom No One Is Responsible*, Graziano Battistella, c.s., executive director of SMC in Quezon City, Philippines, examines the plight of the Rohingya minority ethnic group in Myanmar, which has been persecuted over several decades by the Myanmar government and other actors. The paper provides a historic overview of the conflict in the region between the Rakhine and the Rohingya in Rakhine State, the long-standing patterns of discrimination against the Rohingya, and recent outflows of Rohingya from the region. It also critiques the global response to the outflows and the neglect which drives it. Finally, the author identifies the issues both in Rakhine State and internationally that should be addressed and offers policy suggestions to this ongoing humanitarian crisis based on a responsibility sharing model.

Sergio Carciotto and Aquilina Mawadza of SIHMA in Cape Town, South Africa, address the humanitarian situation in South Sudan in their paper, *South Sudan: A Young Country Divided by Civil War*. The refugee crisis generated by the civil war is one of the most challenging on the African continent, according to the authors, with more than 1.6 million internally displaced and close to one million Sudanese refugees in neighboring countries, such as Ethiopia, Kenya, Uganda, the Democratic Republic of Congo, and the Central African Republic. More than 70 percent of the refugees are children. The authors trace the history of the conflict, which began in December 2013, examine the refugee population it has produced, analyze the regional and international response to the humanitarian crisis, and offer recommendations for action and the need for responsibility sharing among the global community.

In their paper, *Politics and Responsibility Sharing in Facing the Migration Crisis in Europe*, Luca Marin of CIEMI in Paris, Fr. Aldo Skoda Pashkja, executive director, and Carola Perillo, research director, of the CSER of Rome, and Mattia Vitiello, researcher of the Institute for Research on Population and Social Policies in Rome, look at the crisis in responsibility sharing in Europe which led hundreds of thousands of refugees from the Middle East and Africa to enter Europe in 2015 and 2016. The authors give an overview of the situation of refugees in the European Union (EU), the patterns of migration leading to Europe, the political response from the EU, and recommendations for action. The EU provides the structure for responsibility sharing which, the authors point out, is not being utilized. Security is one reason behind this lack of cooperation, but a fear of being overwhelmed by the number of arrivals and changes to the composition of their countries and the European continent is another. The authors also discuss the need for effective integration policies to address these concerns.

Turning to the Americas, similar patterns of migration emerge. In their article, *The Challenges of Migration Trends and Shared Responsibility in Latin America and the Caribbean*, Jorge Martinez of CEMLA in Buenos Aires, and Ernesto Rodriguez Chavez of CEM in São Paulo, look at Latin American and Caribbean migration trends, the forces behind them, and how nations have responded to these migration patterns.

The authors point to poverty, endemic violence in Central America and parts of South America, and natural disasters as forces pushing migrants in the hemisphere and suggest that current international instruments, if honored, could help alleviate the situation. These include the New York Declaration on the Large Movements of Refugees and Migrants, the Montevideo Consensus on Population and Development, and the Agenda 2030 and its Sustainable Development Goals, among others.

Looking at North America, Kevin Appleby, senior director for International Migration Policy for SIMN and CMS, writes about large refugee and migrant populations arriving at the US border and how the US and Mexico, along with other nations in the region, have responded to them. Appleby examines the flow of unaccompanied minors and families from the Northern Triangle of Central America — Honduras, El Salvador, and Guatemala — which began in earnest in 2014 and how the policy deployed by the United States and Mexico to deter the flow has failed. He offers recommendations to shift the US policy from one of deterrence to protection.

The paper, entitled *Knocking on the Door: Vulnerable Populations at the US-Mexico Border*, also looks at the large number of Cubans fleeing persecution in their homeland and Haitians fleeing persecution and natural disasters in Haiti. Populations from Africa, Asia, and the Near East have also arrived at the US-Mexico border in large numbers. Appleby points out that the groups at the US-Mexico border are seeking asylum in the United States, not looking to enter the country illegally.

Each of the papers in this volume analyzes a regional migration crisis and discusses how it should be addressed through regional and international arrangements. It is hoped that these studies will lead to a formula or a set of model policies and responses that can be usefully employed in situations of displacement throughout the world.



## 2 Rohingyas: The People for Whom No One Is Responsible

Graziano Battistella

*Scalabrini Migration Center — Philippines*

### 2.1 Introduction

With the international community focused on the conflict in Syria and the thousands of people seeking asylum in the neighboring countries and in Europe, the plights of other victims of conflict, displacement, and trafficking remain ignored. Southeast Asia has its share of forgotten refugees which include people who have fled the southern part of the Philippines and are in Eastern Malaysia, mostly Sabah; refugees of Karen, Burmese and Mon ethnicities hosted in nine camps in Thailand at the border with Myanmar; Christian refugees from Pakistan temporarily kept in Thailand; and most of all the thousands of Rohingyas in various parts of the region. Like refugees in other regions, they are exposed to conditions that demand protection, consistent with the international law applied to asylum seekers. Increasingly, countries are unwilling to share the responsibility toward certain groups escaping from abuse and persecution. This short article will focus on the conditions of the Rohingyas and call for a factual articulation of the principle of shared responsibility.

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Close to one million Rohingyas are believed to live in Myanmar, mostly in the state of Rakhine, traditionally known as Arakan. However, how they came to live there and what is their ethnic identity are very much subject to dispute.

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When, in May 2015, international news repeatedly focused on boats of desperate people seeking to land in Thailand, Indonesia, and Malaysia, many viewers probably heard of the Rohingyas for the first time. In reality, the Rohingyas are considered one of the most persecuted people of our time (Kingston 2015). As recently as October 2016, security forces launched an attack on the Rohingyas after nine Myanmar policemen were killed, leaving at least 86 dead people and more than 60,000 fleeing to Bangladesh (CMS 2017). International institutions have tried several times to provide a durable solution to their plight but without success. After a short historical overview, this paper will highlight the main controversies and points of view regarding the Rohingyas, recall the 2015 crisis and the issues involved, and sketch a framework for a different approach, including policy recommendations.

### 2.2 Historic Overview

Close to one million Rohingyas are believed to live in Myanmar, mostly in the state of Rakhine, traditionally known as Arakan. However, how they came to live there and what is their ethnic identity are very much subject to dispute.

Rohingyas claim to be a distinct ethnic group which inhabited Arakan from the fifteenth century, when Arakan was briefly a vassal of the Bengali sultanate. Even when it became an independent kingdom, kings continued to use Muslim titles and include Muslim soldiers and personnel in

its administration. The presence of Bengali Muslims increased in the seventeenth century and the Kaman, who, unlike the Rohingyas, are officially recognized as an ethnic group in Myanmar, descended from the Muslim soldiers of that time. However, according to others (like the Rakhine born historian Aye Chan), Rohingya is a term that can be traced only from the 1950s, when the descendants of immigrants from the Chittagong District of East Bengal (present-day Bangladesh), began to identify themselves as such. Needless to say, Chan's position is not accepted by others who reassert the claim of the existence of Rohingyas from an earlier time (Bahar 2009). The official reconstruction of the government of Myanmar traces the term to a 1799 paper by Francis Hamilton. However, that reconstruction specifies that the term did not refer to an ethnic group and that the classification of ethnic groups during the British colonization did not mention the Rohingyas (RUM 2013).

Arakan lost its independence to Burma in 1785, but in 1825 it became part of the Bengal presidency of the East India Company, after Burma was defeated in the first Anglo-Burmese war. With no borders in-between, the Muslim population in Arakan increased, originating in particular from the Chittagong region, and the change in the ethnic composition of the state led to resentments from the Buddhist population (Yegar 1972). Immigrants from India to Myanmar increased further at the beginning of the twentieth century, with many residing in the northern part of the Arakan state. Conflicts between the Muslim and Buddhist populations in the state led to a British investigative commission (Kyaw Zan Tha 2008), but no action was pursued. In 1937, British Burma was separated from British India and the border became official in 1948.

During the Japanese occupation, the Rohingyas were armed by the British to function as a buffer against the Japanese invaders, while the Rakhines sided with the Japanese in the hope of gaining independence from Burma. However, instead of fighting the Japanese, the Rohingyas turned against the Rakhines and the violence that occurred in 1942 is still considered the origin of mistrust between the two groups.

After the war, the Muslims founded the north Arakan Muslim League demanding annexation to Pakistan, but their request was turned down by the Pakistani government (Yegar 1972). Elder Rohingyas, then, founded the Mujahid party with the purpose of establishing an autonomous district directly dependent from Rangoon (Yegar 1972). Large immigration from then Eastern Pakistan to Burma took place in the 1950s. After the 1962 coup d'état, under the socialist rule of General Ne Win, about 300,000 returned to India as their enterprises were nationalized (Smith 1991; Yegar 2002).

Rakhine was again the destination of many Indian Muslims during the Bangladesh war for independence (1971–73). However, after the war, they were disowned by Bangladesh as they had supported West Pakistan during the war (Chan 2005) while they remained unaccepted by the Buddhist population in Rakhine. In fact, because of this large immigration, Buddhist monks staged hunger protests, requesting the repatriation of those Indian Muslims. General Ne Win launched a campaign, called “Naga-Min,” against irregular migrants. About 156,630 Indian Muslims, according to government sources (RUM 2013) crossed over to Bangladesh, claiming persecution and harassment, while from the perspective of the Burmese government they were simply escaping the possibility of being found undocumented and detained (Anand 1978).

However, they were undocumented because after the coup the Rohingyas were not given the National Registration Card (NRC) but the Foreign Registration Card (FRC), which many of them refused (Yegar 2002). The government of Bangladesh protested against the forcible expulsions and after intense negotiations, mediated by the UNHCR, 186,968 returned to Rakhine between

1978 and 1979, many of them on the basis of recognition by elders or previous returnees (RUM 2013; Yegar 2002).

A decisive moment in the endless struggle between the Rakhine and the Rohingya communities came with the 1982 citizenship law, which established three types of citizenship. “Citizens are descendants of residents who lived in Burma prior to 1823 or were born to parents both of whom were citizens. Associate citizens are those who acquired citizenship through the 1948 Union Citizenship Act. Naturalized citizens are persons who lived in Burma before 4 January 1948 and applied for citizenship after 1982” (Kipgen 2013, 300). On this basis, 135 ethnic groups were accepted as citizens of Myanmar, but the Rohingyas were not one of them. Unrecognized by both Bangladesh and Myanmar, the Rohingyas have thus become stateless persons and even the term “Rohingya” is taboo in Myanmar. This was restated as recently as May 6, 2016, by Aung San Suu Kyi, the leader of the first democratic government since 1962, when she met with the new ambassador from the United States.

Following the citizenship law, a new movement has emerged among the Rohingyas, but the perceived diversity of objectives within the movement has not helped it gain general recognition. For some, the movement aims to establish an autonomous territory within Rakhine, which is opposed by the Kaman, the recognized Muslim group within Rakhine. For others, the Rohingyas seem to favor additional immigration from Bangladesh, threatening the ethnic composition of the state. Moderate Rohingyas are willing to let go of their ethnic identification, provided they are granted citizenship (ICG 2014).

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To escape conditions of discrimination, disadvantage, and protracted persecution, many Rohingyas have put themselves in the hands of smugglers with the promise of jobs and resettlement in Thailand and Malaysia.

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The new military regime that came into power in 1988 led a repressive campaign against the Muslims in northern Rakhine and in 1992 about 250,000 Muslims fled to Bangladesh, where they were hosted in refugee camps. Following the negotiation of a MOU between the two governments, the refugees were allowed to return, but it is not clear whether their return was voluntary and some refused to return for fear of persecution. Further riots occurred in 2001 and the most violent took place in 2012, “resulting in 192 deaths, 265 injured and the destruction of 8,614 houses” (RUM 2013, 1). Perhaps 200,000 Rohingyas left their home and 143,500 remain internally displaced according to the UN Office for the Coordination of Humanitarian Affairs (UNOCHA 2015).

As a result, the government instituted a multi-ethnic investigative commission with a broad mandate to examine the situation in northern Rakhine. The commission concluded with recommendations to reconcile differences and move toward peaceful coexistence (including determining the citizenship status of the Rohingyas on the basis of the 1982 law), and to promote the rule of law and economic development (RUM 2013). Apparently, however, the situation has not changed. In 2015, at the first population census in three decades, Rohingyas were banned from registering as such. All Temporary Registration Certificates were revoked and the Rohingyas were not allowed to vote in the 2015 national elections.

To escape conditions of discrimination, disadvantage, and protracted persecution, many Rohingyas have put themselves in the hands of smugglers with the promise of jobs and resettlement in Thailand and Malaysia. Smugglers organized a lucrative human trafficking operation, with the cooperation of border officials, which brought Rohingyas and Bangladeshi migrants to indentured

conditions in Thailand. According to UNHCR estimates, in the first quarter of 2015 approximately 25,000 had left Myanmar and Bangladesh by boat with the help of smugglers and perhaps 300 died (Reuters 2015). When the government of Thailand started closing the trafficking routes, the Rohingyas and Bangladeshi migrants were no longer allowed to land and were left in their boats in the waters of the Strait of Malacca and the Andaman Sea. Eventually, a number of them were given temporary shelter in Malaysia and Indonesia.

## 2.3 Controversies

Because of a variety of intertwined issues (discussed below), the condition of Rohingyas in Myanmar is hard to address.

1. *Civil status.* As indicated previously, most Rohingyas are not recognized as citizens of Myanmar. According to either the 1948 or 1982 citizenship law, they are not recognized as citizens by birth. Therefore, they only can have access to citizenship through either descent or naturalization. Various registrations have taken place since independence. The first one, in 1951, provided national registration cards (NRC) to citizens. Many Rohingyas held such a card, but many others never registered. People without cards were eventually granted a temporary registration card (TRC). In 1989, new cards were issued, based on the 1982 citizenship law: “pink cards for full citizens, blue for associate citizens, and green for naturalized citizens” (Ullah 2011, 143). Holders of NRC who could prove they were citizens had their cards replaced with the citizenship scrutiny card (CSC). Rohingyas surrendered their NRC but were never granted the CSC. According to the UN Special Rapporteur, this constituted arbitrary deprivation of citizenship. In 1995, following UNHCR advocacy, those without documentation were granted a white TRC, which cannot be used as proof of citizenship, since the place of birth is not mentioned, but which constitutes a minimal recognition as Myanmar residents (although it is not a legal status). However, the Rohingyas were allowed to vote in the 2008 referendum for the new constitution, which, however, did not grant them citizenship rights (Lewa 2009). The white card was then taken away in February 2015, ensuring that Rohingyas had no documentation to vote in the national elections (Warzone Initiatives 2015).
2. *The politics of Rakhine.* The Rakhine and Rohingya communities have usually pursued different political objectives and sided with different allies. During the war, the Rohingyas sided with the British and the Rakhines with the Japanese. After World War II, the Rohingyas tried to establish an autonomous district in northern Rakhine, which was opposed by the Rakhines as well as the Muslim Kaman. At the national level, the Rohingyas supported the national parties in the hope of gaining citizenship while the Rakhines voted for local parties. Recently, the situation has changed and the national parties have sided with the Rakhines, further marginalizing the Rohingyas. A resurgence of Buddhist nationalism has further complicated the relations among the two groups (ICG 2014).
3. *The humanitarian crisis.* As a result of the 2012 large riots, where many lost their homes, 137,000 Rohingyas live in displacement camps inside Rakhine. They are assisted by international organizations, such as Médecins sans Frontières (MSF)-Holland, but the action of international organizations is opposed by the Rakhine population. In 2014, assistance was severely hampered and eventually suspended by the government, following the conflict that emerged because the MSF favored the participation of Rohingyas in the census. Eventually the assistance resumed, but the large displaced population remains a serious concern (ICG 2014).

## 2.4 The Different Positions

Views on the issues affecting Rakhine and the relations mainly between the Rakhine and the Rohingya communities differ considerably, as do the possible suggestions to overcome the age old conflicts.

The Rakhines are worried that the ethnic-social composition of society might change and lead to a complete transformation of the state. The fear is generated first of all by demographic trends. As of 2011 the population of Rakhine was 3,338,669, of whom 2,333,670 were Buddhists and 968,218 Muslims. However, the concern is that the fertility rate among Muslims is higher than among Buddhists and that Muslims will one day be the majority, leading to changes in political representation and norms. Such concern is baseless, according to research by the Ash Center of the Harvard University (Fortify Rights 2014). Culturally, the Rakhines find some practices of the Muslim (such as *halal*) offensive. On the economic side, they feel that small business is in the hands of the Muslims while the military and political cronies have dominated the more relevant positions. Views are not uniform within the community and many feel that a way forward must be found. However, “Rohingya” remains a non-acceptable term and hate campaigns still persist, particularly by radical Buddhist organization such as the 969 group (ICG 2014).

The Muslims have a long experience of discrimination within the state, which has its roots in the non-acceptance of their citizenship. Practices such as permission to marry, limitations on travel, forced labor, land confiscation, destruction of property, and personal abuses (such as violence and rape) have been widely documented by Human Rights Watch, Amnesty International, the Rapporteur of the Human Rights Council (A/HRC/25/64) and others (Ullah 2011). Even as recently as November 21, 2016, Human Rights Watch reported the destruction of 820 buildings in villages of the Muslim populated Maungdaw district (HRW 2016). Citizenship is the crucial attainment for the Rohingyas. It remains to be seen to what extent they will consider non-negotiable their identity as Rohingyas since the Rakhines maintain a non-negotiable position regarding the acceptance of the Rohingya identity. The 2012 riots have created increased self-awareness, as expressed by one interviewee in 2014: “Before the violence our Rohingya name was not something we thought about every day. Since the violence, everything has been stolen from us – now all we have left is our Rohingya identity” (ICG 2014, 23).

Directly bordering with the Rakhine state and considered by Myanmar as the origin of the Bengali Muslims who called themselves Rohingyas, Bangladesh has a complex approach to the Rohingyas’ case. On the one hand, there is a sympathetic understanding for the problems that this population constantly faces; on the other hand, Bangladesh considers them citizens of Myanmar and has taken action to discourage possible resettlement of Rohingyas to Bangladesh.

In its “Strategy Paper on Addressing the Issue of Myanmar Refugees and Undocumented Myanmar Nationals in Bangladesh,” the government acknowledges that there are about 30,000 registered refugees in the two camps of Katupalong and Neopara located in Cox’s Bazar district. In addition, it estimates that between 300,000 and 500,000 undocumented Myanmar nationals (the paper never calls them Rohingyas) live outside the camps. The strategy laid out in the paper contains four key elements: listing the undocumented Myanmar nationals in Bangladesh; meeting their basic needs; strengthening the border management; and engaging in bilateral and multilateral relations with Myanmar over the issue. The strategy was well accepted as it is not adversarial in its approach. To what extent Bangladesh succeeds in generating the resources to implement it and how it will use the information acquired through it is not yet clear.



## 2.5 The 2015 Boat People

It was the discovery of mass graves at trafficking camps in the Thai jungle, near Malaysia, where Rohingyas had died of malnutrition and disease that started a public outcry and precipitated changes which eventually led to the boat people crisis. Smuggling at the borders between Myanmar and Thailand has been going on at least since the early 1990s, when Thailand became an important country of destination for migrants. More than 80 percent of migrants in Thailand are from Myanmar and most of them have entered in an irregular way. The dynamics involving the journeys of Rohingyas and Bangladeshis, however, were different in many respects.

First of all, they would not simply cross the border, but would come from afar by boat. Deprived of citizenship, and therefore lacking travel documentation, Rohingyas must utilize the service of smugglers to escape the oppressive conditions in Rakhine. For this service, they would not have to pay money upfront. Apparently, the agreement is that the smugglers would be paid once the people reach their destination. However, once in the hands of traffickers, the families of the migrants would be contacted and asked to pay a certain amount if they wanted their relative to be set free (Amnesty International 2015). When families could not pay, migrants were eliminated or left to die: “The smuggling and trafficking networks in the region are one and the same and many Rohingya who start the journey with smugglers end up as victims of trafficking and are forced into bonded labour on Thai and Malaysian plantations and deep sea trawlers” (ERT 2014). UNHCR (2015) estimates that in the first part of 2015 about 31,000 Rohingyas and Bangladeshis had departed in mixed maritime flows of refugees and migrants. This trafficking generated between \$50-100 million USD, with each trip generating approximately \$60,000 USD to ship owners.

Already shamed by its Tier 3 designation in the 2014 *US Trafficking in Persons Report* and assailed for its inaction against traffickers, the government of Thailand decided to cut down the traffickers’ operations. Consequently, Rohingyas and Bangladeshis found themselves on board of ships that were not allowed to dock anywhere. Thailand, Malaysia, and Indonesia refused to take action, except for providing some food and water to the boat people. Many turned to Australia to participate in search and rescue operations and in the resettlement of the asylum seekers. The Australian government agreed to provide financial assistance (\$714,000 USD) to UNHCR to construct shelters at the Cox’s Bazar camps but refused to be open to resettlement in line with its policy not to accept boat people in its territory. Eventually, after a multilateral meeting held on May 29, 2015, Malaysia and Indonesia decided to rescue some of the boat people, but only for one year and with the support of the international community,<sup>1</sup> after which a more permanent solution was to be provided by the international community. More than one year has passed and the boat people have disappeared from the radar of international public opinion. The Philippines, United States, and Gambia had expressed their ability and willingness to take some recognized refugees for resettlement (Missbach 2015), but it has not taken place.

What happened to the boat people? Malaysia has not ratified the 1951 Convention relating to the Status of Refugees. Therefore, asylum seekers arriving in Malaysia are treated as irregular migrants. They are subject to detention and only have access to the informal labor sector. Nevertheless, as of 2015, Malaysia hosted 94,111 refugees, registered with UNHCR, of whom 88,637 were from Myanmar, and 60,375 asylum seekers, 53,598 of them from Myanmar. According to UNHCR, most of the people from Myanmar are Rohingya. In addition to those registered with UNHCR, Malaysia also hosts an unspecified number of Rohingyas who have been in the country for several generations, but always in an irregular status. From the May 2015 crisis, approximately

1 Turkey pledged \$1 million USD to IOM and Qatar \$50 million USD to Indonesia (Missbach 2015).

1,100 people arrived in Malaysia, of whom 370 are still in detention in the Belantik Detention Centre in Kedah in the northwest of the country (UNHCR 2016). The majority were migrants from Bangladesh and opted to return home, while the Rohingyas had no place to go and are still in camps.

Indonesia accepted approximately 1,800 boat people, of whom about 1,000 were Rohingyas, while the rest were Bangladeshis and were slowly repatriated. The Rohingyas were placed in five camps located in Aceh and North Sumatra (Amnesty International 2015). The initial response of the local population to the arrival of the boat people was positive. Amnesty International (2015), however, expressed concerns about the lack of planning by the government (the right to seek refuge is guaranteed by the Indonesian constitution, but Indonesia has not ratified the Geneva Convention), the uncertainties of the long-term perspective for the asylum seekers, the poor conditions in regard to accommodation and health, and the concerns for safety and the large number of children (521), mostly unaccompanied, in the group. In December 2015 there were already reports that only 400 refugees still remained in the camps in Indonesia. The majority had left, probably trying to reach Malaysia with the help of smugglers (Vit 2015).

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The countless difficulties that Rohingyas experience both in Myanmar and outside Myanmar have one main origin: the denial of citizenship. . .

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Deprived of citizenship and subject to abuse and discrimination in their own land; considered as irregular migrants in Bangladesh, with whom they share language and religion; smuggled and trafficked in Thailand and Malaysia; accepted as refugees in Indonesia and Malaysia, but only for a limited time and constrained in camps because of no legal framework for refugees; and unwanted in Australia and other countries, the Rohingyas are undoubtedly the least wanted people in the world. Many have identified the major concerns which must be addressed and the proper legal framework to be utilized and many have offered recommendations but, to no avail, as no country feels responsible for a durable solution to the Rohingyas' problems.

The final part of this paper will summarize the major concerns affecting the Rohingyas and will frame the main recommendations under the general principles of human security and shared responsibility.

## 2.6 The Issues to Be Addressed

The countless difficulties that Rohingyas experience both in Myanmar and outside Myanmar have one main origin: the denial of citizenship, which applies in specific situations and which ultimately leads to the disregard of human dignity and human security.<sup>2</sup> There are appropriate frameworks to address those situations, but the international community seems unwilling to honor those principles in the name of mounting self-interest and isolationism.

4. *The right to citizenship.* Every country has the right to determine the conditions under which a person is to be considered a citizen of that country and how citizenship can be acquired and lost. However, the discretion of the state is limited by international law. As art. 15 (2) of the Universal Declaration of Human Rights recognizes that everyone has

<sup>2</sup> The main points were addressed in the Report of the United Nations High Commissioner for Human Rights (OHCHR) (A/HRC/32/18). In a Note verbale dated June 18, 2016, the Permanent Mission of the Union of Myanmar has declared that the resolution of the Human Rights Council "in no way help (sic) find a durable solution to Rakhine situation."

the right to a nationality and no one should be arbitrarily deprived of nationality, the UN General Assembly reaffirmed in 2005 that no one should be deprived of nationality on the basis of ethnicity. The Rohingyas claim that the 1982 citizenship law of Myanmar is based on race and ethnicity (BRO-UK 2014), thus depriving minorities — not only the Rohingyas, who have been living in the country for a long time and have no other citizenship — of the right to citizenship. In addition, the acquisition of citizenship through naturalization is limited to persons who can prove that they were living in Myanmar before 1948. It is almost impossible for the Rohingyas to produce such documentation. The law also violates the Convention on the Rights of the Child (arts. 7 and 8), which Myanmar has ratified and which obliges the state to avoid children becoming stateless. The hierarchy of citizenships in Myanmar, which ensures different rights for each type of citizenship, is also considered wrong as all citizens should have the same rights. This might be perhaps the main reason for their insistence on the recognition as Rohingyas, as in the current setting it would be the only way for them to be granted full citizenship.

5. *The right to freedom of movement.* Rohingyas living in the northern part of Rakhine are subject to restrictions in their freedom of movement. Apparently imposed for their protection, such restrictions vary from place to place but can involve obtaining authorization to go from one village to another. Curfew was imposed after the 2012 violence and is regularly extended, granting authorities a lot of discretion, including the prohibition of gathering in groups larger than five persons. Freedom of movement is also severely restricted in the displacement camps in central Rakhine, as confirmed by John Ging, the director of OCHA on May 17, 2016.<sup>3</sup> These measures go beyond the necessary and proportionate initiatives that authorities can take, and they are discriminatory as they only target the Muslim population, are a source of abuse, and limit the Rohingyas access to livelihood and health.
6. *The right to life, civil liberties, health and security.* Various measures and policies enforced in the state limit the civil liberties of the Rohingyas. Couples willing to marry must ask permission to local authorities and are required to present themselves several times. The men are required to shave and women not to wear the *hijab* and large sums of money are demanded. Fortunately, some of these practices have been discontinued but houses can be inspected to verify the nature of relation among people in the household. Spot checks are routinely done, and are a source for extorted money (Fortify Rights 2014). Arbitrary arrest and detention, violence, confiscation of property, excessive use of force, torture and ill-treatment have been frequently reported, together with episodes of sexual violence and rape. Similarly, access to health is impaired by the requirement of permits to travel and the discriminatory access to health facilities. Rohingyas are also barred from studying medicine, economics and engineering, as those courses are reserved only to citizens (OHCHR) (A/HRC/32/18).

The situations described above have long been documented and constitute violations of human rights recognized in various treaties of humanitarian law. Unfortunately, humanitarian law requires the state to safeguard rights and when violations against human rights are committed by the state, it is very difficult to envision quick solutions. Nevertheless, it is important to recall the obligations that Myanmar has subscribed to by ratifying the Convention on the Rights of the Child, the Convention on the Elimination of all Discrimination against Women, the Convention on the Rights of Persons with Disabilities, the United Nations Convention against Transnational

3 Speech by John Ging, available at <https://www.youtube.com/watch?v=Y46jbzxaMNo>.

Organized Crime (including the protocols on trafficking and smuggling of persons), the Convention on the Prevention and Punishment of the Crime of Genocide, and some ILO conventions, including the conventions on forced labor and child labor. Although not a member of many other human rights instruments, it is not the legal framework that is lacking for Myanmar to abandon abuse and persecution of minorities. It is instead the difficulty to muster the political support to overcome an entrenched situation of ethnic conflict that even the newly elected government has yet to find. While Myanmar bears the main responsibility to change the current situation, the international community should share the responsibility to help Myanmar in the process and to ensure the protection of the Rohingyas' basic rights. This duty derives from the development of international soft law, principles that do not constitute cogent law but which are acquiring increasing acceptance and ultimately should inform coherent policies.

## 2.7 Human Security, the Responsibility to Protect and Shared Responsibility

At the root of the difficulties experienced by the Rohingyas and the difficulties in addressing their concerns is the notion that rights and entitlements derive from citizenship. Because of this notion, as Rohingyas are deprived of citizenship in the country where they live and are not citizens of the countries where they try to take refuge, they have become nobody's responsibility. It is necessary to move from that framework to a framework where, although in different terms, responsibility is shared. To move from one mindset to the other it is necessary to begin with the notion of human security.

Human security, in its essence, consists of the fact that every person is free from fear and free from want. Although addressed by many, the notion was amply articulated in the 1994 *Human Development Report*, which emphasized that the concept of human security is people-centered, resting on the notion of a person as a human being — before anything else — applying to all human beings, regardless of their differences. Consequently, it is the duty of all states to guarantee human security to all persons within their jurisdiction. In response to the 2000 call by the UN Secretary General Kofi Annan, the Commission for Human Security (CHS) was established in 2001 and it defined human security as protection of “the vital core of all human lives in ways that enhance human freedoms and human fulfillment” (UNTFHS 2009, 5).

While easy to accept in theory, the notion of human security is not easy to guarantee in practice, as its putative guarantor, the state, is often the one that threatens and undermines human security. In this respect, the principle of responsibility to protect (R2P) complements the principle of human security.

R2P emerged after the intervention of NATO in Kosovo and the consequent division among countries between those who contended that it constituted interference in internal affairs and those who claimed that intervention was necessary to protect a population under threat. In response to a challenge from Kofi Annan, an International Commission on Intervention and State Sovereignty (ICISS) was established and produced a report which was then accepted by 191 nations in the 2005 World Summit. Although criticized as lacking substance, eroding the principle of non-interference and preserving the interests of the powerful countries, R2P holds the international community responsible to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity (ICISS 2001). Unfortunately, an attempt to utilize this principle in the case of the Rohingyas in Myanmar — formulated by the United States and the United Kingdom as a resolution inviting the Myanmar government “to allow humanitarian

access to its citizens, uphold international norms related to human rights, make progress towards democratisation, and release political prisoners” (Kingston 2015, 1170) — was blocked in the UN Security Council by Russia and China.

As the concept of R2P seems already politically charged and wrongly narrowed to possible military intervention, it is important to develop further the cognate concept of shared responsibility. It is a concept which implies multiple actors (countries, international organizations, but also other actors), in reference to a harmful outcome, for which the individual actors have no individual direct or collective responsibility (Nollkaemper and Jacobs 2013). The concept has gained credence particularly in reference to the many crisis situations involving refugees in the world. In this respect, the 2016 UN High-level Summit to Address Large Movements of Refugees and Migrants promised to constitute a fresh start in the concerted effort of the world nations to meet the needs of people seeking asylum and refuge in the world, but failed in the sense that no concrete plan was actually adopted on how responsibilities could be shared. The reality remains that some countries, because of their proximity to world crises, carry a much heavier burden than others.

How to properly allocate responsibilities is not a simple issue. Amnesty International (2016, 37) has proposed objective criteria for responsibility sharing, suggesting that “States’ respective contributions to refugee responsibility-sharing should be proportionate to an objectively defined capacity to host and support refugees.” There might be other ways, but they should be factual. In this respect, the recent declaration of the president of the Philippines, critical of the European approach to refugees from Syria, seems high in rhetoric but not sufficiently concrete, considering the limited support currently given to the few hundred refugees already in the country.<sup>4</sup> In this respect, Pope Francis put it well when he said that “refugees must not only be accepted, but also integrated.”<sup>5</sup> If refugees and Rohingyas in particular are considered someone else’s problem, if security is measured only by the narrow horizon of national borders, the world will continue to remain insecure for all.

## 2.8 Recommendations

In line with direct and shared responsibilities, the following recommendations on how to respond to the prolonged crisis concerning the Rohingyas can be suggested.

### **Recommendations for Myanmar:**

1. Amend the 1982 citizenship law. The citizenship law must be amended in such a way as to ensure that all those who have been residents for a number of years have access to citizenship if they so desire. In particular, access to citizenship should be ensured to children born in Myanmar, in accordance with art. 7 of the Convention on the Rights of the Child. In addition, the law should ensure that all citizens, regardless of how citizenship has been acquired, have the same rights under the law. The issue of the self-identification of Rohingyas remains very controversial, but it should lose much of its contentious character if citizenship is not established on the basis of ethnic origin.
2. Protect the rights of all minorities. The current orders and practices imposed by local authorities in the state of Rakhine and elsewhere which contravene the fundamental rights of minorities, in particular the Rohingyas, should be abolished. Free movement, marriage

4 “They can always come here, and will be welcome here, until we are filled to the brim” (Martin 2016).

5 In-flight press conference of His Holiness Pope Francis from Sweden to Rome, November 1, 2016.



and access to health facilities, and equal protection should be granted to all persons in the state. Myanmar has jurisdiction over all persons living in the state and should guarantee equal protection to all, regardless of religious conviction and ethnic origin.

3. Protect the rights of the child. Regardless of amendments to the citizenship law, all children born in Myanmar should be provided with a birth certificate, identity card, and other appropriate documents.

#### **Recommendations to the Association of Southeast Asian Nations (ASEAN):**

4. Going beyond the principle of non-interference. ASEAN has based its association on the principle of non-interference, which has allowed the membership of countries with very different political traditions and organizations. The concerns involving the Rohingyas affect directly some ASEAN countries, such as Thailand, Malaysia and Indonesia, but indirectly the whole association. ASEAN has made progress in the common approach to the protection of human rights through declarations and institutions, in particular the ASEAN Intergovernmental Commission on Human Rights (AICHR). Although AICHR does not have the means to impose action on other countries, it should be used to establish boundaries that limit the principle of non-interference when the violation of rights undermines the principles and credibility of ASEAN and clashes with the principle of responsibility to protect (Ibrahim and Nordin 2015).

#### **Recommendations to concerned countries:**

5. Countries that already host Rohingya communities — particularly Bangladesh and Malaysia, where they have been staying for a long time — should consider providing them resettlement, as for many Rohingyas there is no other option available. While working in that direction, refugees should be given access to the labor market, with regular work permits that would take them out of the informal economy and the connections with the smuggling and trafficking underworld. The plan announced on February 2, 2017, by Malaysia's Deputy Prime Minister Ahmad Zahid Hamidi to allow Rohingyas who are UNHCR cardholders to work legally is a welcome development, but possibly not very attractive to the refugees as opportunities are offered in selected plantations and manufacturing industries (Goh 2017).
6. Countries of permanent resettlement, in particular Australia, who have afforded little opportunity to Rohingyas, should share in the responsibility to provide a solution to the thousands who have long been without a homeland. There is no dispute that the solution must be found at the source, by eliminating the causes that force people to seek refuge elsewhere. However, working at the causes of displacement is a long-term solution while asylum seekers need immediate assistance (Taylor 2015).
7. International organizations should help the recently elected government in Myanmar to overcome the conundrum that has asphyxiated peace and development in the Rakhine state and find an equitable solution for all concerned parties. Malaysia Prime Minister Najib Razak has recently called the attention of the countries of the Organisation of Islamic Cooperation on the need to end the violence against the Rohingyas in Myanmar, as their displacement is destabilizing the whole region (Al Jazeera 2017).

Defined as the most persecuted people on earth, the Rohingyas seem to constitute an intractable issue. International organizations make sweeping statements but fall short on action. Countries

in Southeast Asia are reluctant to intervene and to use regional persuasion as ASEAN is largely functioning on mutual non-intervention. Myanmar is undergoing a transition toward a firmer democratic base and apparently the Rohingyas have to pay the price for other internal compromises.

This paper argues that the various countries and the international community should not ignore the concerns of the Rohingyas by treating them as someone else's responsibility. In today's globalized world, we all are interconnected and responsibilities should not be shunned but shared. Ultimately, a lasting solution has to come from Myanmar, but Myanmar should be helped in forging the terms for a satisfactory composition of the different interests and a peaceful coexistence of the various groups.

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## 3 South Sudan: A Young Country Divided by Civil War

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### 3.1 Introduction

South Sudan, the country that gained independence in 2011 with huge international fanfare and support, came apart in just one week. On December 15, 2013, it plunged into a civil war, following a fall-out between President Salva Kiir from the Dinka ethnic group and then-Vice President Riek Machar from the Nuer ethnic group.<sup>1</sup> Following this power crisis, South Sudan descended into a national, political, and ethnic conflict, rapidly spreading across many parts of the country and leading to the death of thousands, including children.

South Sudan is at the epicentre of one of the worst refugee crises in Africa. Alongside Syria, Iraq, and Yemen, South Sudan is classified by the United Nations (UN) as one of four “Level 3” (the highest level) humanitarian emergencies in the world, and the only one in Africa (Blanchard 2016, 4). More than 2.5 million people have been forced to flee their homes due to the brutal war. Of these, 1.85 million have been internally displaced in South Sudan and more than 1.5 million have sought safety in neighboring countries, mainly Uganda, Ethiopia, Kenya, Sudan, and Democratic Republic of Congo (DRC) (UNHCR 2017b; Oxfam 2017). Moreover, for the first time, the Central African Republic (CAR) received refugees from South Sudan, as conflict and insecurity spread to new areas of the country.

This paper examines the background of South Sudan’s current refugee situation and protection regime in the thematic context of responsibility sharing and with regard to protection, assistance, and solutions that may offer hope for the future. South Sudan is regarded as a top humanitarian concern in 2017, but this crisis tends to be forgotten mainly because many refugees from South Sudan are not part of the mixed migration flows heading to Europe. Frouws (2016) notes that with the current focus on the European “refugee and migrant crisis,” other displacement crises around the world, unless somehow connected with population flows to Europe, tend to be forgotten. By way of an example, as of April 2016 the South Sudan Regional Refugee Response Plan was funded at just 8 percent (UNHCR 2017a), while the European Union (EU) promised six billion euros to Turkey (European Commission 2016) to deal with hosting Syrian refugees (Frouws 2016).

This paper highlights the importance of the principle of responsibility sharing in ensuring effective refugee protection. Suhrke (1998, 412) states that concepts of responsibility sharing have been central in the current search for reform to safeguard asylum. Such schemes were designed to

1 Dinka and Nuer are the largest tribes in South Sudan, with the Dinka being the largest. Dinkas are predominantly found in seven of the 10 states of the Republic of South Sudan, while the Nuers are found in three states. The Dinka and Nuer share common borders and therefore have some cultural similarities. They are of Nilotic origin, characterized by their physical features of being dark and tall (Ayiei 2014).



create greater equity, thereby increasing the incentives for states to protect refugees. Cooperation and solidarity in shouldering the responsibility are fundamental in assisting countries faced with large-scale refugee displacement in hosting refugees, given the enormous challenges this often entails. It should be noted that the movement of people, including refugees, in an increasingly globalized world can be an important economic and social driver (“Global Compact” 2016).

### 3.2 History of the Conflict

The seeds of South Sudan’s return to violent conflict in December 2013 were sown long before the world’s newest country achieved independence in July 2011 (Brown 2014, 3). South Sudan has a history of inter-ethnic fighting, as well as clashes between rebel groups and the Sudan People’s Liberation Army (SPLA). The two rival pastoralist groups, the Dinka and the Nuer, have competed over grazing land and water for their cattle for many years.

The country has also seen intermittent civil wars in different parts of the country since independence in 1956. Its long and drawn out conflicts are largely a result of the political, economic, religious, and cultural marginalization of the peripheries by the government in Khartoum (Akot 2006). A breakthrough, marked by the Comprehensive Peace Agreement in 2005, led to the independence of South Sudan in 2011. But it has had little significance for Sudan’s other regions, where the agreement was left largely unimplemented, and violent conflict persists (IoC 2009).

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Sudan ranks among the countries with the highest levels of conflict-induced population displacement globally.

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The dismissal of then-Vice President Riek Machar on allegations of organizing a coup against President Salva Kiir functioned as a catalyst for mass violence (Richardson 2011). Initially limited to fighting between loyal and mutinous soldiers, the conflict soon developed into a civilian massacre. Following his dismissal, Riek Machar threw his support behind an armed opposition of Nuer rebels and became their leader. This sparked bloodshed between the Dinka and the Nuer (Howden 2013). The South Sudanese army played a central role in this conflict as it is responsible for the majority of civilian deaths.

The consequences of the renewed conflict have been severe; the exact number of fatalities remains unknown but eye witness accounts have stated that the real number was in the tens of thousands. Additionally, around 200,000 people were displaced and sheltered in camps set up by the UN and nongovernmental organizations (NGOs) such as Doctors Without Borders (Howden 2013). The threats of famine and of sexual violence have increased dramatically, and ethnic tensions and violence have returned to the forefront of intra-South Sudanese relations. The psychological damage to people — and to a country that was slowly shedding the specter of civil war — is enormous (Brown 2014, 3).

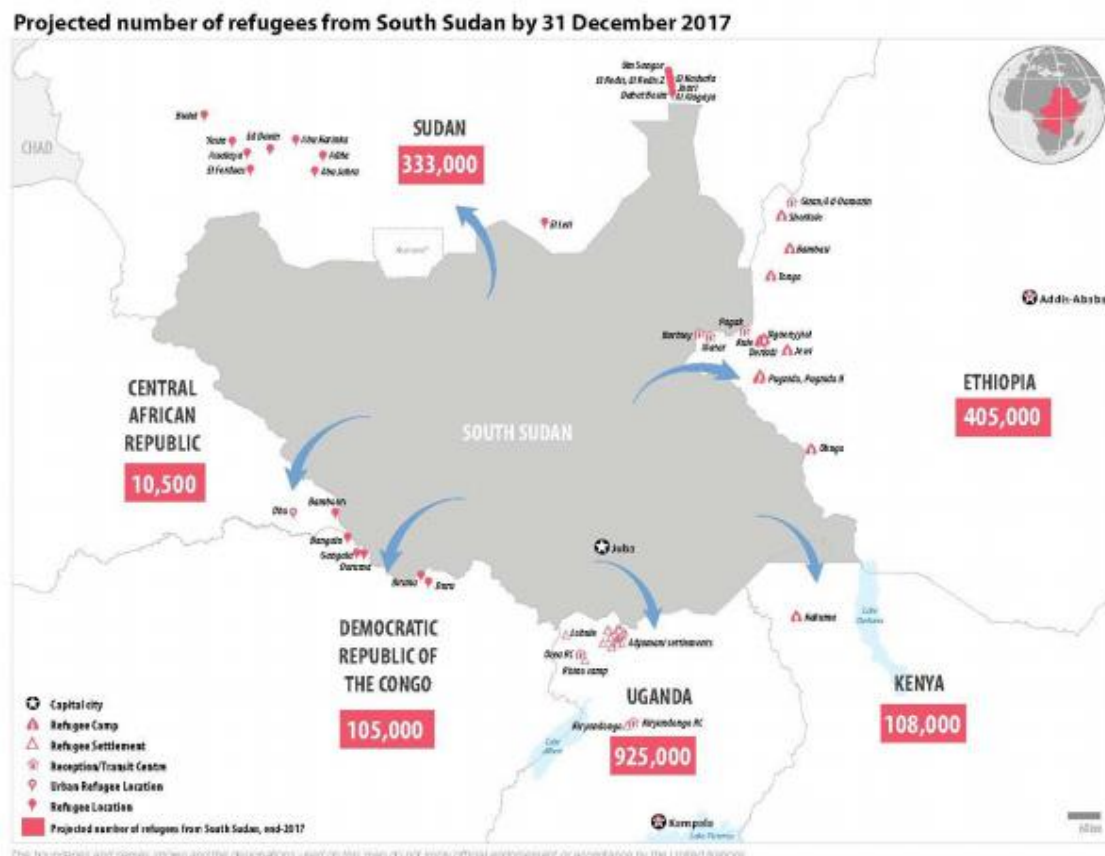
The conflict rages on despite mediation by the Intergovernmental Authority on Development (IGAD) and the troika of the United States, Norway, and China. The Sudan People’s Liberation Movement (SPLM) dialogue is mediated by South Africa’s ruling African National Congress (ANC) party and Tanzania’s ruling Chama Cha Mapinduzi (CCM) at Kenya’s prompting. In July 2016, renewed fighting broke out in South Sudan between forces loyal to the president and vice president with fears that the country was descending into civil war after the just-ended, 30-month conflict.

### 3.3 Overview of Situation with Refugee Population(s) in South Sudan

Sudan ranks among the countries with the highest levels of conflict-induced population displacement globally. The UN High Commissioner for Refugees (UNHCR) estimates that nearly one in four South Sudanese citizens are displaced within its borders or in neighboring countries (RMMS 2016). More than 1.8 million South Sudanese were displaced in various parts of the country as of December 31, 2016, 75 percent of whom reside in the three hardest-hit conflict areas of Unity, Upper Nile, and Jonglei states (UNHCR 2016a). Over 1.5 million South Sudanese have crossed into neighboring countries, including Sudan, Ethiopia, Kenya, and Uganda (see Figure 1 below).

Frouw (2016) contends that the demographics of South Sudanese refugees<sup>2</sup> show that over 86 percent of the refugees are under 18 (64.8 percent) or women above 18 (21.7 percent). Only 13.8 percent are men over age 18. Most of the men are still in South Sudan, either involved in the conflict or taking care of cattle or belongings. The families (women and children) are not likely to leave the region and migrate towards Europe on their own.

**Figure 1. Map of South Sudanese Refugees in Neighboring Countries.**



Source: UNHCR 2016a.

<sup>2</sup> UNHCR data on the South Sudan situation is available at <http://data.unhcr.org/SouthSudan/regional.php>.

Recent research by Frouws (2016) indicates that South Sudanese people remain deeply tied to their homeland. They identify themselves by tribe and clan, which are connected to an ancestral area, and see their land as their heritage. They see the possibility of future return to their homeland as an essential component of their identity. Being pastoralists, movement within South Sudan and across borders is easier for them. Many South Sudanese have extended family reaching across borders in the countries where they seek refuge, with the same tribes present on both sides of the border. This offers additional support upon arrival in neighboring countries.

Uganda is renowned for providing refugees with the land and resources to become self-sufficient. By 2015, Uganda had become the third largest refugee-hosting country in Africa, after Ethiopia and Kenya, with more than half a million refugees (Patton 2016). That number is escalating. Alongside ongoing crises in Burundi and the DRC, violence in South Sudan drove large numbers of refugees to Uganda in 2016. Uganda is one of the most favorable environments in the world for refugees, according to Frouws (2016). Whereas many countries keep refugees in camps away from citizens, Uganda allows them to trade and set up businesses, work for others, and move freely around the country.

### 3.4 Diaspora and Resettlement

South Sudan refugees should receive the same support and attention as refugees from elsewhere. Refugees are an international responsibility which has to be shared. The refugee protection regime is enhanced through dedicated international cooperation, in a spirit of solidarity and responsibility sharing among all states. Resettlement of South Sudanese refugees on a small scale, mainly to the United States, Canada, Australia, and the United Kingdom, has been ongoing for over two decades.

However, a very small percentage of those displaced have accessed official third-country resettlement placements (Shandy 2006, 29). North America and Australia have emerged as key destinations for the Southern Sudanese who have been resettled as refugees. While resettlement in these countries is indeed a form of responsibility sharing, the numbers are very small.

Many refugees in Africa have benefitted from resettlement to third countries, but this option has been used rarely to resettle refugees within African countries. Attempts were made between 1997 and 2001 by Benin and Burkina Faso, but with poor results (Sperl and Brădișteanu 2004). Obviously there are several obstacles to the practice of intra-African resettlement of refugees, most notably the fact that many African countries lack capacity and resources to accommodate resettled refugees and extensive violations of human rights still occur in several parts of Africa.

### 3.5 Regional and International Responses to the Refugee Crisis

Blanchard (2016, 9) states that the humanitarian response in South Sudan, one of the most expensive in the world, has been constrained by funding shortfalls, access challenges, bureaucratic restrictions by the government, threats against the United Nations and other aid agency personnel, and ongoing hostilities. Until now, the burden of responsibility for supporting asylum seekers and refugees in South Sudan has fallen upon regional and international players.

According to Blanchard (2016, 9), the international community continues to mobilize diplomatic, humanitarian, and peacekeeping resources to protect civilians, respond to needs, and bring an end to the conflict. She further notes that government delays and denials of Flight Safety Assurances for UN humanitarian flights to non-government-aligned areas are a significant problem. Rising criminality in Juba, as evidenced by dozens of intrusions into NGO compounds, poses additional risks.

The EU is among the biggest donors of humanitarian aid in South Sudan. So far in 2016, it has provided more than 40 percent of all humanitarian financing to support life-saving programs (European Commission 2017). Banchard (2016) also cites the United States as the main bilateral humanitarian donor, earmarking almost \$1.9 billion USD in emergency relief since the conflict began. The UN's estimated cost for humanitarian partners' responses to the most life-threatening needs in 2016 was \$1.3 billion USD, but its work is considerably underfunded.

### *3.5.1 Civil Society, Humanitarian and Development Actors' Response*

In East Africa, civil society organizations have taken on provision of vital services to South Sudanese refugees, complementing the work of the UNHCR, the organization responsible for safeguarding and protecting the rights of refugees. Civil society organizations have mobilized resources mainly from foreign governments and donors to provide access to life-saving services for refugees. The list is long but one vital service stands out — education (Bojovic 2016, 15). For instance, in the camps in Kenya, Kakuma, and in the settlements in Northern Uganda, civil society organizations have responded with unique educational services that respond to the needs of the different age groups. These include language classes, early childhood and primary education, provision of scholarships, and vocational training and alternative learning for adults. As remarked by Mumbi (2016) “educating refugees has both short-term and long-term benefits. In the short-term, it eases their integration in the host countries while a long-term benefit is that it prepares them to positively contribute to their own countries once they return.” Bojovic (2016, 16) maintains that the civil service in South Sudan has a number of senior staff who have benefited from education scholarships obtained in countries in which they had sought asylum in before they repatriated after independence in 2011.

Thousands of refugees fleeing violence and human rights violations in South Sudan benefit from major aid operations for water and sanitation, health and nutrition food assistance, and education. However, with dwindling foreign funding, projects continue to downsize and civil society requires new innovative sources of support. Jonathan Veitch, a UNICEF representative in South Sudan is of the opinion that the situation has been getting bleaker every day since the beginning of the crisis in 2013. There is need for more donors to come on board with the funding required to keep programs running. While donors have been generous in the past, there is a frustration at the lack of progress in the peace process (Young 2016). The 2017 South Sudan Regional Refugee Response Plan is outlined below.

**Table I. Financial Requirement by Country and Sector (USD) as of December 31, 2016**

Sector	CAR	DRC	Ethiopia	Kenya	Sudan	Uganda	Total
Protection	3,572,850	7,486,584	38,006,345	7,021,818	17,884,927	74,893,227	148,865,751
Education	389,103	4,666,000	21,894,951	7,362,693	8,944,793	51,845,413	95,102,953
Food	4,141,000	31,303,005	70,963,814	34,125,000	46,441,223	134,971,092	321,945,134
Health and Nutrition	510,000	3,191,479	42,421,928	4,444,708	32,409,271	80,005,465	162,982,851
Livelihoods		7,997,882	35,024,781	15,585,886	11,426,627	46,311,932	116,347,109
Logistics and Telecoms	943,000	3,800,000	11,916,522	950,858		14,717,201	32,327,581
Shelter and NFIs	1,818,772	6,630,000	41,816,214	12,740,546	22,667,897	44,069,898	129,743,327
WASH	941,177	5,300,000	41,898,146	4,955,536	25,525,386	46,562,578	125,182,823
Operational Support	1,518,917	1,631,580	9,632,194	1,438,850	1,355,123	64,865,582	80,442,246
<b>Total</b>	<b>13,834,819</b>	<b>72,006,531</b>	<b>313,574,894</b>	<b>88,625,895</b>	<b>166,655,247</b>	<b>558,242,388</b>	<b>1,212,939,774</b>

Source: UNHCR 2016a.

### *3.5.2 Intergovernmental Authority on Development (IGAD) and Individual Country Responses*

In South Sudan, the responsibility for hosting refugees is disproportionately shared with particular countries (Lyons 2016) hosting a greater majority of refugees. Neighboring African countries bear a responsibility to host refugees and migrants, which is disproportionate to their resources. Such unequal sharing of responsibility is at the root of the global refugee crisis and the many problems faced by refugees. Moreover, as remarked by Carciotto and d’Orsi (2017) “such difficulties are exacerbated by the fact that currently in Africa, apart from some good examples, such as Uganda, refugees are not welcomed. African states are increasingly imitating other countries across the globe, closing their borders and threatening to return by force those who have entered their territories.”

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*In South Sudan, the responsibility for hosting refugees is disproportionately shared with particular countries hosting a greater majority of refugees.*

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From a regional perspective, IGAD and individual member countries alike have played a central role in the response to the South Sudan refugee crisis. IGAD is a regional organization which brings together eight eastern African countries — Djibouti, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Uganda, and Eritrea. IGAD is strongly committed to the promotion and maintenance of peace, security, and stability in the region. This commitment includes the creation of mechanisms for the prevention, management, and resolution of interstate and intrastate conflicts through discussion (UNECA 2016). According to an International Crisis Group report (ICG 2015a), the region, with the backing of IGAD, has led the effort to mediate between the warring parties in South Sudan, with the support of the African Union (AU), the UN Security Council, and international partners.

The IGAD mediation is led by a chief mediator, the former Ethiopian foreign minister, Seyoum Mesfin, who is joined by mediators from Kenya. It is overseen by the Heads of States (HoS), including Uganda. IGAD has been working to broker a power-sharing agreement between the two sides, with limited success. The IGAD mediation process is fraught with regional rivalries and power struggles. Uganda is mediating at the HoS level and has deep animosity toward Sudan



and dislike of former South Sudan Vice President Riek Machar, now head of the Sudan People's Liberation Movement-in-Opposition (SPLM/A-IO). Uganda is also unhappy with President Kiir's relationship with Sudan and his indecisiveness on measures to end the conflict.

President Yoweri Museveni sent troops to support Kiir at the outset of war and remains Juba's staunchest ally. Uganda has often sought to benefit financially and politically from foreign military activities, and its deployment in South Sudan serves this end. Uganda is seen as the kingmaker in South Sudan's peace process and has supported the power-sharing option to end the conflict. However it seems keen to maintain the status quo and also support the SPLM mediation by South Africa's ANC and Tanzania's Chama Cha Mapinduzi political parties. There is a belief that the operations of Uganda's army, the Ugandan People's Defence Force (UPDF), are funded from South Sudan's "national reserves" and also "senior politicians' assets" which were transferred to Uganda at the onset of the war (ICG 2015a, 6-8). While Uganda is an important ally, it has failed to support a political solution to the conflict and has derailed the mediation process. It should be noted that Uganda has economic interests and businesses in the Equatoria region of South Sudan.

Interestingly, IGAD fights, mediates, and negotiates in this conflict. According to Diing Wol, (2014), one could be a party to a conflict and, therefore, a party to a negotiation process, if the need arose. However, to be a mediating party in the same conflict is unusual. IGAD is fighting, mediating, and negotiating in the South Sudan conflict, all at the same time. This situation has never before arisen, either in conflict resolution theory and practice.

**Uganda:** On July 7, 2016, fighting again broke out in Juba between the government forces of President Salva Kiir and rebel forces loyal to then-Vice President Riek Machar. In Uganda, the resumption of fighting in South Sudan triggered one of the worst refugee emergencies since the initial influx of South Sudanese refugees in 2014 and saw some 70,000 South Sudanese refugees arrive in the month following July 7. Worryingly, women and children made up as much as 95 percent of the new arrivals during this period, fleeing from a conflict now notorious for sexual and gender-based violence and other war crimes (UNHCR 2016b). The countries hosting refugees from their crisis-gripped neighbor, South Sudan, are straining under the sheer weight of the unending exodus as desperate people continue to arrive at their borders every day.

By early December 2016, more than 600,000 South Sudanese refugees had sought asylum in Uganda, mainly in the Adjumani, Kiryandongo, and Arua regions. This number includes those in Uganda prior to the 2013 conflict and the influx of 489,234 persons in 2016 and 58,022 in 2017 (as of January 31) (UNHCR 2016a).

Uganda's open-door policy has been hyped as being one of the most generous in the world. Through the Settlement Transformative Agenda, local communities are part of the support system for refugees. The host communities' goodwill is harnessed, food is shared, and goods are traded as communities are made to feel included in the noble cause of hosting those displaced by manmade or natural disasters. Under the Refugees Host Communities Programme, at least 30 percent of interventions must focus on host communities and 70 percent on refugees. This is essential in a community that is poor and has suffered conflicts and civil war, and yet has accepted the refugees without fear of depleting resources.

**Ethiopia:** Like Uganda, Ethiopia has a very high stake in this crisis. It also has economic interests in trade and has infrastructure in the area. Ethiopia believes that Uganda's military intervention has created harmful regional dynamics, endangering the mediation efforts of IGAD, of which Uganda is a member. Ethiopia has sought to play a balanced but highly visible role in these mediation efforts (Mesfin 2014, 1).

Ethiopia is the IGAD chair, and there is a widespread perception that Addis Ababa is the driving force behind the mediation and that it carefully protects this role. The Gambella state borders with Ethiopia and is inhabited by the Anyuak and the Nuer. The Nuer in Ethiopia have joined the war in support of their kinsmen in South Sudan. The Nuer dominate the SPLA-IO. Ethiopia hence prefers to stay neutral to avoid insecurity in its borders (ICG 2015a, 9). The year 2016 saw consistently high numbers of new refugees from South Sudan. In Ethiopia, by the end of 2016, 340,000 refugees from South Sudan sought asylum, the vast majority of them in the Gambella region (UNHCR 2016a). This includes the pre-December 2013 caseload of about 54,000 refugees.

**Kenya.** Nairobi's South Sudan policy is guided by the desire to maintain stability necessary to secure its economic interests and growing diplomatic profile in the region and beyond. In addition, many current and former officials have significant investments in South Sudan. In Kenya, more than 90,000 refugees from South Sudan have sought asylum, the vast majority of them in the Kakuma region (UNHCR 2016a). The total number includes South Sudanese refugees who were in Kenya prior to the end of the 2013 conflict. The Kakuma camp in the northwestern part of Kenya, home to hundreds of thousands of South Sudanese refugees escaping conflict and hunger, is anticipating more refugees as fighting in South Sudan continues.

New countries have come on board to protect and assist South Sudanese refugees. For the first time, the CAR and the DRC received refugees from South Sudan, as conflict and insecurity spread to new areas of the country. In the CAR, since mid-December 2015, more than 4,000 refugees from South Sudan have sought asylum, the vast majority of them in the Bambouti.<sup>3</sup> UNHCR estimated that as of January 31, 2017 in the DRC, more than 68,000 refugees from South Sudan have sought asylum since 2016, the vast majority of them in the Haut-Uele region, and more particularly in Dungu (UNHCR 2017).

**Sudan** is hosting at least 400,000 South Sudanese refugees who fled a brutal civil war that erupted in the world's youngest country after it broke away in 2011. In Sudan, 300,000 refugees from South Sudan have sought asylum, the majority of them in White Nile and South Kordofan (UNHCR 2016a). This number includes some 82,000 newly arrived South Sudanese since the beginning of 2016.

Centralization of decision making at the HoS level and related lack of institutionalization within IGAD has been and remains problematic. A huge oversight was IGAD negotiating only with the elites, mainly the SPLA and SPLA-IO, leaving out the local armed groups, religious leaders, civil society, and traditional authorities. Hence IGAD missed out on important complexities of the local culture and politics. IGAD turned down the expertise and advice of the Troika and the EU on suspicions of their involvement and influence in the conflict.

3 Bambouti is a place with a very small population in the state/region of Haut-Mbomou, Central African Republic.

However, a multi-stakeholder approach was accepted, which brought together representatives from opposition political parties, faith-based groups, and civil society. IGAD, which is largely composed of member states where political debate is held within the ruling party, not civil society, “is ill-equipped to manage a process that includes opposition parties, civil society, traditional authorities and faith leaders, despite good-faith efforts” (ICG 2015a, 17). The government limited the position of civil society to observation (*ibid.*, 18-19).

To overcome these challenges, the government announced a revised, expanded mediation – “IGAD-PLUS.”

**IGAD-PLUS** was announced in March 2015 following 15 months of unsuccessful mediation under IGAD. IGAD-PLUS members include the AU, UN, EU, the Troika (United States, United Kingdom, and Norway), China, and the IGAD Partners Forum (IPF). The IGAD-PLUS approach to the mediation is shaped by two factors: firstly, that the parties are unwilling to come to an agreement without pressure, and secondly, that IGAD would need to call on the weight of the wider international community to exert the necessary pressure in a coordinated manner (ICG 2015a, 4-5). The IGAD-PLUS formula, involving all the regional and international countries and organizations that have leverage on the two parties, is viewed as the last resort in resolving the conflict.

### 3.6 Recommendations for Action

James Hathaway (2007) is a proponent of responsibility sharing as a global solution to the refugee crisis and contends that the existing legal framework, under the 1951 Refugee Convention, is adequate and contains guidelines and procedures for international cooperation in refugee protection. What is lacking is the implementation. Responsibility sharing, according to Hathaway, should include both financial commitments and “accepting persons through agreed quotas for resettlement.” All states should participate in this global crisis and the UNHCR should carry out the international administration, making refugee status determinations more effective.

However, the challenge of responsibility sharing is that refugees are concentrated in the global South, hence making the burden greater in that area. The need for funding and sharing the responsibilities on refugees stand out. The South Sudan refugees and asylum seekers are in a highly precarious situation. The conflict has taken long to end, hence the need for longer term solutions. Our specific recommendations are the following:

1. Identify and address as early as possible the drivers and triggers of displacement related to conflict and persecution in order to prevent the need for persons to flee, or the need to move onward. There is a need to take rapid action to prevent situations from becoming protracted. Locally-led initiatives to address the deep-rooted ethnic divisions should be supported by national and international actors. While not viewing the conflict along purely ethnic lines, there is still a need for recognition that the manipulation, or instrumentalization, of ethnicity has created devastating ruptures at a local level. Therefore there is a need for multiple, locally-led initiatives that will allow these deep-seated divisions to be addressed. Ultimately, however, local disputes cannot be resolved if the broader governance structure is not reformed (IRRI 2014, 7).
2. **End the conflict.** The region and AU should accelerate the mediation process to stop the conflict and ensure a return to calm and normalcy in South Sudan. Mediation has taken a

long time, with IGAD's 15 months of mediation unable to achieve results. The HoS should commit to the peace process and set aside their political and economic interests in the country. In any case, a peaceful South Sudan will be of immense benefit in terms of trade and other businesses in the region.

3. **South Sudan's leadership needs to be held accountable.** All actors involved in bringing about a national solution to the conflict — including IGAD, the AU, UN, and key international partners — must ensure that any peace agreement includes provisions on accountability. South Sudan's new leadership has failed to transition from a rebel group to a democratic government and instead is perceived to be nepotistic and corrupt. There is an urgent need for good leadership that confronts and reverses the country's legacy of injustice and partisanship, and replaces it with a state that ensures that all South Sudanese have equal legitimacy to belong at both a local and national level. In particular, it is important that those involved in seeking an end to the current violence ensure that any deals reached do not simply re-distribute power to those who have already failed to effectively exercise it (IRRI 2014, 6).
4. Many African countries are shouldering the responsibility of hosting refugees and this is putting their financial resources under stress. It is imperative that states use their capacities to find adequate and collective solutions for refugees, as proposed by the 2016 New York Declaration on the Large Movements of Refugees and Migrants.
5. **Quota system for refugees.** As per Hathaway (2016), the quota system of sharing refugees needs to be actively considered in the region and beyond. UNHCR should play the administrative role in the reception centers documenting the refugees, skills, needs, and preferred destinations. UNCHR should thereafter distribute refugees in terms of their preferences. As in the case of Yumbe in Uganda, the refugees settled well because their way of life (economic activities) and culture were not too different from the host community. The language might also be similar. Refugees with a rural background may settle well in a rural setting where their lives are not disrupted but can continue as if they were at home. The same applies to those from urban settings who had jobs in their countries. The four stable neighboring countries need to come up with the relevant strategies and policies for hosting refugees. The AU member countries could also host some of the refugees.
6. **Financial responsibility sharing.** Most refugees are hosted in the global south where resources are scarce and in most cases the countries cannot cope with their own population's social services delivery demands. Yumbe is a case in point. While all the necessary supporting structures are in place, financial shortages and the huge inflow of refugees have caused sanitation problems leading to disease outbreaks. In this case, through the coordination of UNHCR and other humanitarian agencies, a needs assessment and budget should be made per hosting community and country and resources should be mobilized from the international communities that are signatories to the 1951 Refugee Convention.
7. **Host countries need to guarantee refugees and internally displaced persons access to primary health care, basic education, and employment.** In particular the right to work, which is protected by international and regional human rights instruments, as well as many national constitutions, is essential to preserve human dignity and to promote self-reliance amongst the displaced population. African states that are home to a large refugee population do not have adequate resources to provide for the needs of their own population and, therefore, foreign aid should aim to strengthen basic service provision in order to improve services for both nationals and non-nationals.

8. Apart from the provision of basic services, such as education and medical care, it is fundamental for donor states and international organizations to fund livelihood interventions and to promote self-reliance, in particular amongst refugees who have been in protracted refugee situations for many years.
9. **Allow the refugee to decide on destination.** Some refugees may opt for certain destinations based on knowledge and skills they possess on the country of destination and should be given the choice to do so. An example is Syrian refugees who have opted to resettle in Germany. Refugees can help build the economies of the host countries.
10. **Protection of refugees on trek to refuge countries.** As refugees trek on foot or in trucks to countries or places of refuge, they come across many challenges. For instance, women and children suffer sexual abuse from the attackers they are fleeing. They usually carry very little or no food and may fall victim to starvation or be taken advantage of on the way or as they reach host communities. More needs to be done by the region and the UN to protect the refugees as they trek to places of refuge.

### 3.7 Conclusion

The South Sudan migration and refugee crisis reveals “the failure of responsibility sharing.” Faced with the scope and complexity of displacement in South Sudan, it is clear that there is a huge *imbalance* between the protection and assistance needs of displaced persons, on the one hand, and the capacity of the host countries, on the other. Ethiopia, Sudan, and Uganda, due to their proximity, host the largest populations of South Sudanese refugees. The geographic proximity is an imbalanced way of sharing the responsibility of refugees on the African continent. It is for this reason that many African countries that border refugee producing countries opt to restrict refugees to camps or find ways to prevent or discourage them from accessing their territories.

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The South Sudan migration and refugee crisis reveals “the failure of responsibility sharing.”

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African countries bear a responsibility disproportionate to their resources to host refugees and migrants. Regional approaches also fundamentally ignore the fact that refugee protection is a shared, global responsibility and international cooperation is fundamental. There is a need for a commitment to sharing responsibility for hosting refugees more broadly, evenly and fairly, in recognition of the fact that responsibility sharing stands at the core of the international protection regime. We therefore agree with a recent report by Amnesty International that highlights that wealthy countries have shown an absence of leadership and responsibility, leaving just 10 countries, which account for less than 2.5 percent of the world’s GDP, to take in 56 percent of the world’s refugees (Amnesty International 2016).

South Sudan is involved in the conflict and human rights violations that provoke refugee crises, which means that it, too, must also be part of the solution. Greater coordination between national, regional, and international actors is needed to prevent a return to more widespread violence and a new exodus of refugees.



### 3.8 Appendix

#### *A Story by a South Sudanese Refugee*

I am South Sudanese by nationality. I was born on the 12th of December 1992 in place called Nasir, near the border with Ethiopia. This place is occupied mostly by Nuer speaking people and personally, I am a Nuer.

As it is known, South Sudan gained her independence from the former Sudan (Northern Sudan) on the 9th of July 2011. This was after twenty-two years of war with Northern Sudan. We thought that we had achieved lasting peace in our nation but this was not the case. Things turned the other way round and we ended up fighting among ourselves due to a power struggle among our leaders. The war was fought and is still being fought along ethnic lines and Nuers are the main target.

It all started in December 2015 when there was supposed to be an election. The contest was between Salva Kirr (who was and still is the president) and Dr. Machar (who was the Vice President and is currently the rebels' leader). Mr. Kirr knew that there was a high chance of Dr. Machar defeating him in the contest since him, (Machar), was more popular. Therefore, Kirr mobilized his Dinka community to take up arms against the Nuer community. He gathered some youths and took them to a place called Luri in the bush for training as militias.

After the training, they were deployed by Kirr and the first target was Dr. Machar's home where they tried to assassinate him, but luckily enough they did not succeed, as Machar was able to escape. The soldiers then embarked on a killing mission and their target was the Nuer people. This is why I fled my home area of Nasir and sought refuge in one of the United Nations' camps, from where I managed to get into Kenya.

The journey to the camp and to Kenya was not an easy one. On many occasions we were attacked by the Sudan People's Liberation Army (SPLA) soldiers and missed death by a whisker. I remember one day when on our way to the UN camp together with my brother and four cousins, we were caught by some SPLA soldiers. It was early in the morning and the rebels were conducting their regular patrols in the bush looking for Nuers. They asked us whether we were Dinkas or Nuers and when they found out that we were Nuers, they asked for our phones and money. After we handed over these items to them, they started firing at us. We begged them to spare our lives since we were innocent civilians, but this fell on deaf ears and they responded by saying that they have no peace with Nuers and therefore they could not negotiate with us. They shot at us and killed my brother alongside my two cousins. I was lucky to survive the shooting, together with my two cousins, albeit with bullet wounds. We spent that day in the bush and the night too. We trekked a long distance before we got to the UN camp in the morning the following day.

The time between the shooting and when we got to the camp forms the most terrible part of my life. We spent the whole time without food and water despite the fact that we had been injured. We hardly slept and the few hours we did, it was in trees. This was in fear of attack by the SPLA soldiers. But by God's grace, we managed to get to the UN camp. In the camp we received some treatment for the bullet wounds we had sustained. We stayed in the camp for three weeks.

Life in the camp was more hell. The amount of food we were getting in the camp was too little and we usually survived on one meal a day. There was also the problem of a water shortage. This was due to the high number of people in the camp. The tents in the camp were not enough and we were always congested in the camps. The SPLA tried to attack the camp at one time, but their attack was thwarted by the UN forces guarding the camp.

One day, the government of Kenya decided to evacuate its civilians who had been caught up in the crossfire and who were spending life in the camps. I saw that as an opportunity to get out of the camp. As Kenyans were being evacuated, I got onto the bus that was being used to ferry them to the airport. My brother was working at the airport and I knew he would arrange my flight to Kenya since he had helped many of my village mates fly out of South Sudan. Lucky enough, when we got to the airport, he organized my travel logistics with one of his friends in the UN and a Commander in the UN Forces. As Kenyans were being taken back home, I used that opportunity and that is how I got to Kenya. Upon arriving in Nairobi, I met my cousin at the airport. He had been informed that I was on my way to Kenya and therefore he was waiting for me in the airport. I did not have relevant travel documents but I was allowed to leave the airport's clearance area after parting away with some few dollars as a bribe. I was taken to the hospital upon arrival. My cousin took me to his house in one of the estates within Nairobi and the following day he took me to a private hospital where I was treated for my wounds.

Later, I relocated from my brother's house when I joined college and moved to a new place which is in close proximity to the college. I am currently taking a course leading to the awarding of a Diploma in Procurement from a University in Kenya. My life has never been the same since I left home. I live here in Nairobi, Kenya, with my fellow refugees. All Sudanese refugees live in a place called Kasarani in the environs of Nairobi. The authorities in Nairobi and the Kenyans in general are very hospitable. It's out of their hospitality that I managed to join college.

I usually survive on the funds which my brother sends me. He works with the United Nations and out of his salary, he usually send me a little money which keeps me going. I also work in a certain company in Nairobi where I am paid some money, however small, which, combined with what my brother sends me, helps me to survive. I also have a small shop in our estate where I have employed someone. It helps me pay my rent and do my shopping. I thank God for it.

In relation to the whereabouts of the rest of my family, my parents were killed when the war broke out and we fled the war with my only brother and four cousins. But they were shot dead along the way. I don't know about my extended family members, but what I know is that my nuclear family members are all dead by the hands of the SPLA soldiers.

The experience in a war torn country is not a nice thing and I did swear that I will never go back to South Sudan unless Salva Kiir (our president) and his groups leave power. I wonder why IGAD, AU, US and the entire world cannot see the truth and still want to believe the lies and support the killers (Kiir's government). They should see the suffering in South Sudan.

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## 4 Politics and Responsibility Sharing in Facing the Migration Crisis in Europe

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### 4.1 Introduction

The European Union (EU), nowadays defined in terms of “freedom, security and justice,”<sup>1</sup> was conceived as a region without internal borders but requiring strict control of migration around its external frontiers from its member states. From the end of the 1980s to the beginning of the 1990s (following the establishment of the Schengen area<sup>2</sup>), the creation of this so-called “fortress Europe”<sup>3</sup> coincided with the first massive arrival of “exiles,” increasingly forced to take sea routes to reach European soil (see Castagnos Sen 2016). This period witnessed an intensification of international migrations towards the Old Continent: after the fall of the Berlin Wall in 1989, millions of citizens of the former Communist bloc, descendants of Germans (more than two million of *Aussiedler*), Greeks (several hundred thousand of *Pontians*), Hungarians, and Finns returned to the countries they historically regarded as their lands of origin. In 1991, thousands of Albanians crossed the Strait of Otranto to land in Apulia; during the conflict in the former Yugoslavia, millions of Bosnians, Serbs, Croats, Kosovans, and Macedonians spread throughout Europe, namely in Germany and Scandinavia.

At the same time, the year 1990 saw the signing of the first Dublin Convention, which had the effect of transferring the responsibility for the processing of asylum applications (and, implicitly,

1 According to the new functioning of the European Union (EU) introduced in 2007-2009, under this heading is roughly placed what formerly belonged to the second pillar of the Community organization, including issues relating to immigration and asylum linked to security and public order.

2 The Schengen Agreement (June 14, 1985) between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany, and the French Republic proposed the gradual abolition of checks at their common borders. In 1990 the agreement was supplemented by the Schengen Convention, which proposed the abolition of internal border controls and a common visa policy for all EU countries. See “Schengen, Borders and Visas,” 2017, European Commission (Migration and Home Affairs), [https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas_en).

3 This expression, recalling Hitler’s “Festung Europa” during World War II, appears at least around 1985 to have referred to immigration and asylum policy (see footnote 10). Many media, especially dealing with economic subjects, contributed to the success of this slogan.

for the reception of the applicants), especially to European countries located along the border of the Schengen area, many of which had very little experience in this field before that time.

From the creation of “fortress Europe” to the present, international political conflicts became increasingly complex, as strife and civil wars broke out in Rwanda, Iraq, Afghanistan, Sri Lanka, in the Horn of Africa, in the countries involved in the “blood diamonds” trafficking (Liberia, Sierra Leone, Guinea Conakry), in Congo, Sudan, and in the Sahel region. More recently, the countries of the “Arab Spring,” and Ukraine have experienced conflict.

Violent and dictatorial environments, wars, persecutions, economic crises, lack of essential vital services, natural disasters, and “emigration agencies”<sup>4</sup> account for a multitude of factors that contributed to drive millions of persons to leave their countries of origin. Those with greatest access to economic resources are always likeliest to find refuge in developing nations where it is possible for migrants to return to lives of stability and safety, in a more favorable socioeconomic context.

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The refugee crisis . . . has generated significant changes in the European migration system, ushering in new trends.

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In response to this gloomy international context, and through the constitution of the European fingerprint database for identifying asylum seekers and irregular border-crossers (EURODAC 2003), the creation of the European Border and Coast Guard Agency (Frontex 2004), the establishment of multiple agreements with neighboring countries in order to stem migratory flows, the setting up of the European system for border surveillance (EUROSUR 2013), and the hardening of entry and stay conditions for the most deprived non-EU nationals, the EU has always opposed a securitarian response.

Four years after the “Arab Spring,” internal struggles within the countries involved and the economic sanctions imposed on them led to a boost of forced migrations, with a significant increase since the end of 2014, which many observers have attributed, somewhat reductively, to the creation of the Islamic State in Iraq and Syria (see, for instance, Banulescu-Bogdan and Fratzke 2015). Faced with this massive influx throughout the years 2015 and 2016, and despite the experience accumulated over decades and very clear warning signs (see Bundy 2016), the EU struggled to manage this phenomenon, and grew to question its founding principles, a crisis that resulted from policies inspired by fear of migration “through-draughts”<sup>5</sup> and of meeting sophisticated needs for border control.

## 4.2 Defining Terms

For at least three years, the European press has defined this state of affairs as a “crisis” due to non-EU nationals who entered Europe through the Mediterranean Sea “suddenly,” and therefore not because of European migration policy as it had traditionally been carried out. However, the words

4 By “emigration agencies,” we mean legal or illegal societies encouraging and persuading the people of a region to migrate in order to be recruited by receiving countries’ enterprises, with the promise of good salaries and better life conditions.

5 This expression, often used in French political speeches, but reflecting a very common European attitude, refers to the supposed irresistible attraction that a receiving country may acquire if entry procedures or life conditions are made easy for immigrants. For this reason, EU member states seem to adopt any policy likely to discourage any form of immigration.

used to identify populations on the move differ significantly from country to country. In general, most nations, in their own languages, refer to these people as “migrants,” with the exception of the German-speaking countries (except English and Luxembourgish), that commonly use the term “fleeing people” or “exiles” (*Flüchtlinge* in German). This is not an irrelevant divergence. Countries such as Germany, Denmark, Sweden and Norway have a long tradition of receiving refugees. For many others, political speeches trade on the ambiguity of definitions to avoid facing a considerable “imposed immigration.”<sup>6</sup>

Whether it refers to the information about “migrants” or to the fate in store for them, terminology plays an important role, and sometimes has a detrimental effect on the lives of the people concerned. We have placed quotation marks on the term “migrant” because it is too general and, in the collective European imagination, it is associated with the figure of the worker or the low-skilled foreign job seeker coming from an underdeveloped country. For decades, this figure of non-EU comer has been the target of xenophobic political speeches and manifestations. Many people are unaware that most of the individuals who make up the migratory flows continuing to hit the headlines in the European newspapers are *refugees* who fall within the definition of the 1951 Geneva Convention. Refugee status is not an attribute that one may “get,” but a quality that has to be “recognized” by identifying the people who are not granted the protection of their state while they face persecution in their countries. Despite what many administrations of the EU member states may argue, this recognition is not necessarily “individual”; it can also be “collective.”

Moreover, the notion of “asylum” — which long predates 1951 — differs from the notion of “refugee,” since it indicates the granting of a refuge by a sovereign authority to a person fleeing any danger. It is therefore a gracious act, while the recognition of refugee status is bound to the signing of international agreements (see Rigaux 1985). For this reason, considering “asylum seekers” as persons waiting to be recognized as refugees is not legally or conceptually correct.

### 4.3 Overview of Situation with Refugees in the EU

The refugee crisis — perhaps more accurately characterized as the European crisis in the management of flows of those in need of international protection — has generated significant changes in the European migration system, ushering in new trends. These may be understood in terms of three emerging issues. First, the number of arrivals; second, the nature of these flows; and, finally, the routes traveled to enter the EU. The latter represent an essential element for the proper functioning of the asylum procedure while being a serious complication for the common European asylum system. According to the Dublin Regulation, every asylum application must be examined by just one member state; the responsibility for examining an application for international protection rests primarily upon the state that has been involved in the entry of an asylum seeker into EU territory. With few exceptions, according to the Dublin system, this means that the state having the responsibility for examining the application is also the state in which the asylum seeker should remain after obtaining protection. Therefore, an asylum procedure relies upon the country from which people traveled to enter Europe, because it will be this country

6 According to the principles of Nicolas Sarkozy’s migration policy, which became part of European policy through the adoption in 2008 — under the French presidency of the European Union — of the European Pact on Immigration and Asylum, the so-called “imposed immigration” (immigration subie, which can also be translated as “suffered” or “inflicted” immigration) is the antonym of “chosen immigration.” The former is explained by its inventor, Maxime Tandonnet, through these terms: “it is that kind of immigration imposed on states on the basis of international conventions concluded in the past, namely asylum and family reunification” (Tandonnet 2007, 87).

which would receive asylum applications. This translates, for countries at the border of the EU, into a mandatory management of asylum procedures for each new asylum seeker.

Data on the number of illegal crossings — i.e., the number of times that persons were detained as they attempted to cross the border without the necessary authorizations required by the Schengen code — show that from 2009 to 2016 the main routes to enter Europe were the Eastern Mediterranean route (crossing the Mediterranean from the Turkish or Syrian coasts to land in Greece or Cyprus) and the Central Mediterranean one (crossing the Mediterranean from the Libyan coasts to land in Sicily). In other words, Italy and Greece, especially in 2014 and 2015, were the main gateways to enter Europe. In 2014, the Central Mediterranean was the main route used to enter the EU. During the same year, the border police along this route accounted for two-thirds of the total number of detections reported by the police forces of EU countries. This increase is partly due to the growth of migrants from Syria (40,000 Syrian citizens detected along this route in 2014), followed by 34,000 Eritreans.

The paths followed by migrants to enter the EU significantly changed in 2015, with a revamping of the Eastern Mediterranean route and a partial abandonment of the Central Mediterranean route. The Eastern Mediterranean route accounted for the highest percentage of attempted crossings in 2015, as also occurred between 2010 and 2012. This increase in Eastern Mediterranean flows however, did not turn into a significant decrease in flows through the Central Mediterranean route; in fact, in the first months of 2015, the latter were roughly the same as in 2014, and they largely declined in the last months of 2015. The main driver of such increasing flows along the Eastern Mediterranean seems to be a change in the route to enter in Europe followed by Syrian citizens: in 2015, they arrived in the EU mainly by sea and land through the Eastern Mediterranean and western Balkans routes, while the Central Mediterranean was and continues to be crossed by migrants coming mainly from African countries.

According to a survey conducted by Altai Consulting in 2014, Syrians have more problems along the Central Mediterranean route for two main reasons. First, as also highlighted by an International Organization for Migration (IOM) report, after the various conflicts in Libya in 2014 there has been a higher risk of abuse and exploitation of migrants and asylum seekers who embark on this route. Secondly, Egypt introduced a mandatory visa requirement for Syrians in July 2013; Algeria did the same in December 2014. This is why it became more difficult for Syrians to travel across those countries and therefore access the Central Mediterranean route toward the EU. Contrary to what has happened last year, when after the second half of 2016, the detections along the Eastern Mediterranean route have decreased dramatically. Simultaneously, there was a recovery of the Central Mediterranean route. Once again, the main driver of such decreasing flows along the Eastern Mediterranean route seems to be a change in the paths followed by Syrian citizens; in the course of 2016, they were trapped in Turkey after the EU-Turkey agreement of March 2016 (see *infra*).

Migrants became extremely flexible in choosing their routes in response to external changes, such as an increasing danger on a given route or the introduction of specific legal obligations to cross borders or the closure of the latter. One can predict that if a country located along a route of entry into Europe closes its border, flows are likely to shift toward a different route, rather than the migrants (and smugglers) abandoning the attempt to cross.

So, in a migration system characterized by the routes taken to enter Europe, a direct consequence of the Dublin system is their maximum concentration in the countries that are located on the southern border of Europe, namely Greece and Italy. Moreover, the unique rationale of the Dublin



Regulation — a burden sharing among signatory countries on the basis of the mechanism of the country of first entry — generates a disproportionate number of transfers to the EU countries located on the outside border. This is why, in its actual operation, the Dublin system multiplies the concentration of refugees in Greece and Italy. On the one hand, refugees are forced to stay in these countries, not having the right and opportunity to go elsewhere; on the other hand, the same mechanism brings them back to the same countries in the event they manage to circumvent the first barrier.

As a result, today's burden is disproportionately placed on these two countries, especially on Greece. The same consequences that this mechanism is exhibiting on the southern border of the EU may soon show up on other borders of Europe. Long ago — in the wake of a theoretical reasoning about the possible consequences of a system thus conceived after launching the Dublin II Regulation — some authors argued that any “success” of the Dublin Regulation would benefit only the “old” European states: the burden would then be progressively shifted toward the countries situated on the southern and eastern border of the EU. So, the current state of the European migration system, wherein the prior flows and reception of people were disjointed by the large volume of migrants seeking to enter the EU, often at significant risk to their own well-being, is characterized by a crisis of border management, predominantly of the Mediterranean border.

Another serious side effect of the Dublin system is the increasing resort to detention of asylum seekers who receive a transfer order, insofar as the authorities of the host country fear they may try to escape before the transfer is completed.

Finally, it is worth mentioning the issue of secondary movements, i.e. asylum seekers moving from the countries of first entry toward other member states of the EU. The main objective of the Dublin Regulation is to prevent the secondary movement of asylum seekers in Europe, albeit this objective has not been fulfilled. This phenomenon is not due to the refugees' desire to reach countries with higher reception standards. Indeed, refugees have a migration project that takes into account other factors, such as the presence of family ties and/or communities as well as labor market conditions. Assuming that refugees are fully aware of how the inconsistent common European asylum system works, the asylum procedure is important to determine which irregular migrants can legally remain in Europe. Yet, this has no significant influence on determining the countries in which these migrants seek asylum or where they are likely to remain, in spite of their irregular status.

The data on detections by nationality shows that the primary users of the Eastern Mediterranean route in 2015 and 2016 were nationals from Syria, Afghanistan, Iraq, and Pakistan. While Syrian nationals were the top nationality using the Central Mediterranean route in 2014, in the last two years Nigeria has been the top nationality on that route, followed by Eritrea, Gambia, Guinea, Ivory Coast, Senegal, Mali, Sudan, and Somalia.

While the major users of the Eastern Mediterranean route were migrants from Syria, Afghanistan, Iraq, and Pakistan, the Central Mediterranean route is being mainly used by people coming from sub-Saharan African countries, mostly from West Africa and the Horn of Africa. These two poles of origin are experiencing socioeconomic transition phases and very different situations of crisis.

On the Asian side, Europe witnesses forced migration, as people flee war or other situations marked by daily violence and a total lack of the rule of law. On the African side, however, the profiles of the conflict are blurred. Migration from the Horn of Africa has more and more in common with

forced migratory movements. In West African countries, crisis situations are more fragmented and conflicts are varied in nature and in many cases still not internationally recognized. Therefore, among migrations from these countries, it is difficult to distinguish between forced migration and voluntary migration and between economic migration and refugee migration. They are better understood as “mixed migration,” namely migration flows composed of refugees, asylum seekers, economic migrants, and other migrants. To enter Europe, economic migrants and those in need of international protection make use of the same routes and of the same means of transport. Asylum seekers who are not able to enter legally may likewise appeal to smugglers. The mixed migration for countries of first entry represents a major challenge for the management of migration flows. The classic distinction between economic migrants to be rejected at the border and refugees to be accepted is hardly applicable in the contemporary European migration context.

The intensity and magnitude of flows, their flexibility in choosing and changing the routes of entry, their acceleration, the variety of countries of origin, their composition based on age and gender, the presence of social figures with complex needs, could not but upset the delicate balance that holds together the common asylum system in Europe.

However, the current situation in Europe is to a large degree unprecedented. Although sometimes described as an asylum crisis or a crisis of migration, it is in fact a combination of both and arguably the product of a number of different crises. There are the crises in countries outside of the EU, such as Syria or Eritrea, which have caused the displacement of millions of people seeking asylum, both internally within those countries and externally, with a particularly large impact in the neighboring states. There is a humanitarian crisis of the millions of refugees living in extremely challenging circumstances in these neighboring countries, whether in well-organized refugee camps or outside of those.

At the same time there is also a crisis of border management, in which the normal flow and reception of people has been disrupted by the large volume of migrants seeking to enter the EU either for work or safety, often at significant risk to their own well-being. This has emerged in different forms at different parts of the European border and the situation is constantly changing. The response to these different processes is unlikely to be the same and the complexity of the present situation makes the development of policy solutions particularly challenging.

#### *4.3.1 Problems of Migration Statistics: Limits of Administrative Data on Valuing the Migration Phenomenon*

In 1949, The UN Department of Social Affairs published *Problems of Migration Statistics*. The document starts with the following: “The inadequacy and lack of comparability of migration statistics have been realized for a long time. Possible means of improving these statistics have formed the subject of a number of serious studies in the past and have been discussed at various international meetings” (UNDSA 1949,1). Since then, the knowledge that the dynamics of migration were asking more than corresponding administrative data analysis has increasingly assumed prominence in scientific debate. The production of comparable statistics on international migration and asylum in the EU is impeded by three significant hurdles: the availability of data; if available, the reliability of that data; and, if available and also reliable, the comparability of the data.

A first clarification appears necessary, as the international demand on analyzing the dynamics of migration is increasing, especially those relating to the inclusion of migrants in the host society.

On one hand, it is because the traditional concepts (tied to citizenship and country of birth, etc.) are now inadequate and anachronistic to be able to analyze the social dynamics of migration that have become ever more complex. On the other hand, it is a consolidated fact that migration to a host country, seen as shifting, and the subsequent dynamics characterizing the path of migrants and their descendants in host countries, seen as closely intertwined and interacting, are processes that are not equivalent. Their analysis requires tools for interpretation that are as specific as possible, more similar to statistical surveys, than to the use of census or administrative data.

Mainly, the international scientific debate is concentrated on the relation between data collection about migrants, normally administrative data, and the social impact of migration phenomena. The three principal sources for statistical migration analysis are demographic flows, acquisition of citizenship, and statistics on migrant employment, based on the Labour Force Survey (LFS). In 1998, the United Nations (UN) drafted new recommendations for the production of statistics on the phenomenon while the International Labour Office stimulated research aimed at improving the process of collecting data on international migration in general and, more specifically, on labor flows (Bilsborrow et al. 1997; Hoffmann and Lawrence 1996). Moreover, to these attempts are added numerous projects, on a national basis, concerning the comparability of data and statistical cooperation for improving the quality of information produced in the countries of immigration and emigration (Poulain 1991, 1993; Salt et al. 1994; Poulain et al. 2006). Those efforts had also, at the EU level, an important political fallout: the proposal of a specific regulation on migration statistics, established by European Parliament and Council (CEC 2005). Despite these initiatives, research on international migration and the social impact of migrant presence in the receiving society are still far from finding definitive and satisfactory solutions to all the problems of statistical measurement.

### *4.3.2 Face the Facts: Asylum Seekers and Refugees Statistics*

#### **A. ILLEGAL BORDER-CROSSING ALONG THE EXTERNAL BORDERS OF THE EU**

Frontex, in its last annual report (published in 2016, based on 2015 data; see Frontex 2016), characterized the flow of migrants to Europe as “an unprecedented number of detections of illegal border-crossing between border crossing points (BCPs), revealing a migration crisis without equivalent in Europe since World War II.” UN Secretary-General Ban Ki Moon in 2016 presented the same analysis from a different point of view on migration, so-called “illegal cross-borders”: “We are facing the biggest refugee and displacement crisis of our time. Above all, this is not just a crisis of numbers; it is also a crisis of solidarity.”<sup>7</sup>

This interpretation starts from data collection, but is a declaration on the political responsibility of the institutions managing the migration phenomenon more than a mere census-inspired exposure of an illegal act. Furthermore, it is necessary to underline that migratory movements recorded in Europe since the second post-war period, as with many previous migration flows, are structural and permanent, even in times of decreased labor demand, such as during the 1970s or during the most recent global economic crisis. The “emergency” of hospitality brought about by the increase in the number of refugees and asylum seekers is not a crisis of numbers, but rather a challenge to models of solidarity and social inclusion. The growing number of migrants, asylum seekers and refugees, rather than generating a new model of policies more focused on the integration of migrant groups, has focused the attention of European governments on

7 Statement of Secretary-General Ban Ki Moon on April 15, 2016, available at <http://www.un.org/press/en/2016/sgsm17670.doc.htm>.

interventions to strengthen identity checks, closing external borders, and restraining migration flows. In European countries, the existence of common problems of migration has highlighted, therefore, the need to increase cooperation in the field of management of migration processes, adapting national legislation required by the EU in the field of security and immigration, and participating, at the same time, in the development of a coherent cooperation strategy within the European Neighbourhood Policy (ENP). The crucial point, however, is the absence of a shared responsibility policy, support and solidarity action, and, above all, a forward-looking vision of the policies of the post-emergency period. Since the beginning of 2015, Frontex estimates that more than 1.8 million detections of illegal entries associated with an estimated one million people who arrived at EU borders through different routes, mainly irregular channels. These persons are fleeing conflicts and violence in their countries of origin or seeking a better life.

During 2015, inflows increased and the routes used by asylum seekers were modified. The greatest number of detections (872,938) occurred on the Eastern Mediterranean route, corresponding with arrivals on the Greek islands of the Aegean Sea. Most arrivals were Syrian, although towards the end of the year, the share of Afghan nationals grew considerably. On the Western Balkan route, a total of 764,038 detections were counted, primarily on Hungary and Croatia's borders with Serbia. The largest proportion of migrants had previously arrived on one of the Greek islands and then continued through Macedonia and Serbia. In early July 2015, Hungary erected a barrier on its border with Serbia and Croatia and began hard border controls in September. Meanwhile, the number of people entering Italy via the Central Mediterranean route declined by about 10 percent in 2015. This was in large part due to a contraction in the number of Syrians opting for this route, as the majority preferred the shorter Eastern Mediterranean route, driving the total number of migrants down to 153,946 as compared with approximately 170,000 during the same period of 2014. Mostly Africans, from Eritrea and West Africa, were recorded on this route, and their detections grew compared with statistics from this time in 2014.

IOM considers the Central Mediterranean route the most dangerous and around 3,770 persons went missing or died at sea in 2015. On the other routes, the situation remained comparable to previous years: with 7,164 detections reported from the Western Mediterranean route (-1 percent compared to 2014), 8,932 on the circular migration route between Albania and Greece, and 68 in the Black Sea. While detections on the eastern land border remained at relatively low numbers, 1,920, Frontex recorded an unusual increase in unfounded asylum applications at the Norwegian and Finnish borders with the Russian Federation (the Arctic route). An increasing number of migrants, specifically from Afghanistan and Syria, were recorded along this route, beginning in September 2015, without proper documents and then applying for asylum. More generally, citizens from Syria and Afghanistan represented the highest share of detections of illegal border crossing on every route in 2015. The vast majority arrived via Turkey and Greece, while just approximately 7,448 Syrians and 117 Afghans were reported along the Central Mediterranean route. On this route, Eritreans are ranked first in terms of the nationalities of migrants arriving with 38,791 detections. However, as regards regional totals, West Africans (54,828) represented the largest share of migrants arriving on this route. Since 2014, the number of detections of West Africans has been continually increasing, up to 64,169 detections in 2015, about 86 percent of which took place on the Central Mediterranean route.

West Africans constitute the largest contingent of asylum applicants in Italy. The breakdown by nationality, however, should be considered with careful attention, because thorough interviews of a proportion of migrants during the screening procedure indicated a high degree of falsely claimed nationalities. A great number of migrants claimed to be Syrians or Afghans, hoping to elude return to Turkey or to their countries of origin, and, in so doing, accelerate their travels

within the EU. As mentioned, administrative data on the numbers of illegal border-crossings is helpful to understand the volume of migration flows. However, it can be misleading with respect to offering a detailed picture of the migrants themselves.

### B. ASYLUM STATISTICS (EUROSTAT<sup>8</sup>)

Former spikes in migration occurred in the EU in 1992, when it received many asylum applicants from the former Yugoslavia (672,000 applications in the EU-15<sup>9</sup>) and, again, in 2001 (424,000 applications in the EU-27<sup>10</sup>), whereupon the number of asylum applications fell to below 200,000 by 2006. The applications from citizens of non-member countries increased gradually within the EU-27, and later the EU-28, through to 2012, after which the number of asylum seekers surged to 431,000 in 2013, 627,000 in 2014, and close to 1.3 million in 2015. The number of asylum applications within the EU-28 in 2015 was almost double the number recorded in 1992. The number of first-time asylum applicants in the EU-28 more than doubled from 563,000 in 2014 to almost 1.26 million in 2015. The rise was primarily due to higher numbers of applicants from Syria (29 percent), Afghanistan (14 percent), and Iraq (10 percent), and to a lesser extent, from Albania and Kosovo (5 percent), and Pakistan (4 percent). Iraqis represented the largest relative increase compared with figures from 2014, when they were among the most numerous groups of citizens seeking asylum in the EU-28 in 2015. There was also a significant growth, in relative terms, in the number of applicants from Syria and Iran, Afghanistan and Pakistan, Ethiopia, as well as Albania and Kosovo, and a large increase in the number of first-time applicants with unknown citizenship. The biggest relative fall in the number of applicants was registered for Mali, whose number of citizens requesting asylum decreased by more than one-third between 2014 and 2015. The number of first-time asylum applicants in Germany increased from 173,000 in 2014 to 442,000 in 2015. Hungary, Sweden, and Austria also recorded very relevant increases (all in excess of 50,000 more first-time asylum applicants) between 2014 and 2015. In relative terms, important increases in the number of first-time applicants were recorded in Finland (over nine times as high), Hungary (over four times) and Austria (over three times), while Belgium, Spain, Germany, Luxembourg, Ireland, and Sweden noted that their number of first-time asylum applicants more than doubled since 2014. The opposite was true for Romania, Croatia, Lithuania, Slovenia, and Latvia, who all recorded fewer first-time asylum applicants in 2015 than in 2014. In Germany the share of the EU-28 total rose from 31 percent in 2014 to 35 percent in 2015, while the other EU member states reported a marked increment in their quota of the EU-28 total, as follows: Hungary (13.9 percent, + 6.6 points), Austria (6.8 percent, +2.2 points), and Finland (2.6 percent, + 1.9 points). The percentages for France and Italy, of the EU-28 total, dropped nearly five points between 2014 and 2015, to 5.6 percent and 6.6 percent, respectively.

An overview of the five groups accounting for the greatest number of first-time asylum applicants (by citizenship) in each of the EU member states is as follows: Syrians comprised the largest number of applicants in 12 of the 28 EU member states, including 159,000 applicants in Germany (the highest number of applicants from a single country to one of the EU member states in 2015), 64,000 applicants in Hungary, and 51,000 thousand in Sweden. 46,000 Afghan applicants were recorded in Hungary, 41,000 in Sweden, and 31,000 in Germany.

8 See the Eurostat database for asylum and managed migration, available at <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>.

9 The EU15 comprised the following 15 countries: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom.

10 The European Union comprises the following 27 countries before Brexit is finalized: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom.



Another 54,000 Albanians, 33,000 Kosovars, and 30,000 Iraqis also applied for asylum in Germany; no other EU member state received 30,000 or more asylum applicants in 2015 from a single citizenship group. Eighty-three percent of first-time asylum seekers in the EU-28 in 2015 were under 35 years of age; ages 18 to 34 years accounted for more than half (53 percent) of the total number of first-time applicants, while nearly three in 10 (29 percent) of applicants were minors less than 18 years old. This age distribution of asylum applicants was common in almost all of the EU member states. There was one exception to this model: Poland reported the highest proportion of asylum applicants under 14 years old (42 percent). In 2015, there were 88,700 applications from unaccompanied minors in the EU-28, which constituted 23.1 percent of all applications from minors. Among minors who applied for asylum, the highest shares for unaccompanied minors were in Italy (56.6 percent), Slovenia (50.6 percent), Portugal (50 percent), and Sweden (50 percent). The distribution of first-time asylum applicants by gender shows usually that more men than women were seeking asylum. In particular among the younger age groups, males accounted for 55 percent of the total number of applicants in 2015. For asylum applicants who were 14–17 or 18–34 years old, roughly 80 percent of applicants were male, with this share falling to around 50 percent for the age group 35–64. The gender distribution proves most balanced for asylum applicants aged 65 and over, where female applicants numbered just slightly higher than male applicants in 2015, although it should be noted that this group accounted for just 0.6 percent of the total number of first-time applicants.

Data on decisions on asylum applications are available for two instance levels, namely the first-instance decisions and the final decisions taken in appeal or review. In 2015, there were 593,000 first-instance decisions in all EU member states. Germany was the site of the largest number of decisions, more than 40 percent of the total first-instance decisions in the EU-28 in 2015. Overall, there were 183,000 final decisions, with the largest percentage (51 percent) in Germany. The outcomes of first-instance and final decisions shows that in 2015 more than half (52 percent) of EU-28 first-instance asylum decisions resulted in positive rulings, that is, grants of refugee or subsidiary protection status, or an authorization to stay for humanitarian reasons. For first instance decisions, about 75 percent of all positive resolutions in the EU-28 in 2015 were for refugee status; while for final decisions the share was slightly lower, at 69 percent. Overall, a total of 229,000 persons were granted refugee status in the EU-28 in 2015 at first instance, 56,000 subsidiary protection status, and 22,000 authorization to stay for humanitarian reasons.

The highest share of positive first-instance asylum decisions in 2015 was reached in Bulgaria (91 percent), followed by Malta and Denmark, both over 80 percent, and the Netherlands (about 55 percent). By contrast, Latvia, Hungary, and Poland had first-instance rejection rates above 80 percent. Positive final decisions based on appeal or review were received by around 25,700 people in the EU-28, of which 16,700 were granted refugee status, 4,600 were admitted to subsidiary protection, and a further 4,400 obtained humanitarian status. The share of final asylum decisions in 2015 was mostly positive in Italy (82 percent) and Finland (67 percent). Conversely, in Bulgaria, the Netherlands, and Austria, positive final decisions based on appeal or review, fell to roughly 50 percent. The fewest positive decisions were recorded in Estonia, Lithuania, and Portugal, where 100 percent of final decisions were negative.

## 4.4 EU Political Responses to the Recent Influx of “Migrants”

The following brief report summarizes some of the reactions, positions, and political decisions expressed by the EU and its member states regarding the influx of migrants over the last two years.

#### 4.4.1 Overview

Throughout 2015, Italy and Greece saw thousands of people landing daily on their coasts as situations of great instability pushed migrants from war-torn nations to emigrate by any means necessary, including through dangerous and uncertain passage to Europe via the Mediterranean Sea. The first reaction of concerned public authorities was the only humanly acceptable one: to rescue migrants, many of whom are found in failing, improvised vessels and abandoned by smugglers. As in previous years, these arrivals increased during the summer months, and EU member states quarrelled over responsibility for managing the phenomenon: Countries directly affected by migratory flows argued for a “community” responsibility, while those only indirectly affected insisted on a “national” one. From Sicily, a small portion of the newcomers were able to escape from the overcrowded Italian reception centers and moved on to France or Switzerland and then to Germany, Belgium, or regions off the coasts of England. From the Greek islands off the Aegean Sea, a sort of “migratory highway” was formed, leading to Germany through the Balkans.

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Driven by contradictory emotions, the general attitude of the Europeans towards “migrants” has often shifted from benevolence. . . to a more-or-less concealed rejection after terrorist acts or during election campaigns.

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In the face of the accelerating pace of migration to EU member states, the European media launched a “general alert,” sometimes giving the impression that the EU was facing an imminent invasion of colonizers or terrorists. Brussels witnessed numerous summits to this effect, without participants ever coming to a unanimous agreement concerning shared responsibility, except as regards external border security and the need for more subsidies for Frontex, more police cooperation, and more expulsions.

Driven by contradictory emotions, the general attitude of the Europeans towards “migrants” has often shifted from benevolence — especially after the moving image of Aylan Kurdi, a Syrian child found drowned on a beach in Bodrum, Turkey, on September 2, 2015 — to a more-or-less concealed rejection after terrorist acts or during election campaigns.

Whereas in June 2015, a migratory wave of almost one million people seemed to be inevitably heading towards the EU, only one country in Europe had already proved in the past to be able to manage such an inflow: Germany. At a press conference on August 31, 2015, German Chancellor Angela Merkel said that the challenge was huge, but Germany was strong enough to take it up (“Wir schaffen das!”, “We can manage it!”).<sup>11</sup> This unexpected position, in spite of the rumors of underlying political and economic calculations, took Germany’s European partners, whose points of view were hitherto very heterogeneous and divergent, by surprise. Indeed, on the migration issue the EU was now divided into several blocs: entry countries (Greece and Italy), transit countries (Balkan countries, Hungary, and Austria), direct host countries (Germany, Denmark, Sweden), countries opposed to any “burden sharing” (Poland, Czech Republic, Slovakia and, again, Hungary), countries willing to host a low quota (Benelux, France, and Spain), and a country challenging the EU as if it were no longer a part of it (the United Kingdom).

11 The full text of Angela Merkel’s summer press conference of August 31, 2015, can be found at <https://www.bundesregierung.de/Content/DE/Mitschrift/Pressekonferenzen/2015/08/2015-08-31-pk-merkel.html>. To quote just one of its paragraphs: “I say quite simply: Germany is a strong country. The attitude by which we approach these things must be: if we could already do so much in the past, now we can do it (again)! (wir schaffen das) We can do this, and if something hinders our way, it has to be overcome, it has to be worked on. The Confederation will do everything in its power, together with the Länder, together with the municipalities, to achieve this result.”

Faced with this situation, Merkel committed Germany to absorb much of this first great wave of immigration, pending a “definitive” solution. After making this difficult choice, Merkel became the target of harsh criticism, including from her closest allies. She quickly resorted to the expedient that previously had “effectively” contained migration to the EU via Morocco and Libya; i.e., an agreement with a “border country” of the Schengen area supposed to retain migratory flows on its soil in exchange for substantial economic aid.

There is no evidence that a real “Merkel’s plan” was then set up, but her strategy inspired most of the subsequent Community decisions. The opening of Germany to large numbers of refugees was intended to be only the first step towards a broader plan for the whole EU. This plan envisaged: 1) diffusing throughout European territory the “migrants” already present; 2) persuading Recep Tayyip Erdoğan’s Turkey, as well as a large number of the exiles’ origin nations to retain, on their soil, all the “candidates for emigration to the EU,” giving Europe the time to *choose* the quotas of individuals to be resettled within its territory; 3) establishing a particularly powerful border guard agency; 4) transforming Italy and Greece into sorting areas for asylum seekers through *hotspots*; and 5) spreading out the people classified as entitled to receive any form of protection by sending them to centers situated within various member states (including among the recalcitrant ones).

Six months passed from Merkel’s “Wir schaffen das!” declaration, to the agreement with Turkey, during which relations between EU member states continued to deteriorate (as exemplified, for instance, by the restoration of internal border controls between various member states), while terrorist attacks hit France, Germany, and Belgium. As a corollary of these events, the migration issue was once again amalgamated with terrorism, to such an extent that, the day after attacks in their countries, the French and German ministers of economy (Emmanuel Macron and Sigmar Gabriel) were already considering the creation of a common 10 billion euros fund “for the fight against terrorism and for the aid to refugees.”<sup>12</sup>

Finally, the agreement between the EU and Turkey on a “global plan to reduce migration to Europe” was signed by both sides on March 18, 2016. According to its supporters, it represents a success since, after its signing, the IOM recorded a drastic drop in the arrivals to the Greek islands: 26,971 in March and 3,360 in April. Starting from that moment, in Greece “migrants” were divided between those who applied for asylum “before” the 20th of March 2016 and those who did so only “after.” For the latter, direct transfer to Turkey was foreseen. Furthermore, the agreement, supposed not to violate the 1951 Geneva Convention, stipulates that the EU must admit any Syrian present on Turkish soil in a particularly vulnerable situation, while, in exchange, each Syrian whose asylum right is rejected will be returned to Turkey (“one Syrian for one Syrian”). On June 7, 2016, the EU also unveiled its new plans to integrate migrants and to prevent their further arrival, proposing to grant a total of 8 billion euros over five years to countries such as Sudan, Eritrea, Ethiopia, Jordan, Niger, Nigeria, Lebanon, Mali, Senegal, and Tunisia. According to Frans Timmermans, vice president of the European Commission, this measure aims to reward countries that are fighting against the “root causes” of migration.<sup>13</sup>

12 This news was disseminated by both German and French media on November 24, 2015, after the yearly meeting of the Federal Association of German Employers (BDA).

13 Frans Timmermans’s words may be consulted here: [http://europa.eu/rapid/press-release\\_IP-16-2072\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2072_en.htm). On June 7, 2016, the European Commission published the communication on an “Action Plan on the integration of third country nationals” (COM[2016] 377), which also included the results of the La Valletta summit, held in November 2015, with the proposal of an “EU Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa.”

These agreements are based on a recurring assertion made by several heads of state and ministers that “Europe can’t take any more migrants”<sup>14</sup> since it is supposed to have reached its maximum threshold limit. While these resolutions have partially slowed population movements from the Balkans, they had a different impact on the seaway to Italy, as migratory routes had already begun to follow other paths in order to bypass new obstacles to circulation. Despite its drawbacks, for many of Europe’s political leaders, the agreement with Turkey represents a new phase in managing the “migratory crisis,” with the EU’s attention now focused on sorting the migrants, on sharing responsibility for their care and placement, and on accelerating the processing of applications for asylum.

Between 2015 and 2016, several countries, including Germany, France, and Switzerland, taking inspiration from EU Directive 2013/32 “on common procedures for granting and withdrawing international protection” and especially on its article 31/8, have undertaken reforms on their asylum laws to speed up the examination of applications by providing more detailed criteria for the immediate rejection of some applicants. In the great majority of states likely to be the final or transitory destination of asylum seekers, central and local administrations have mobilized themselves to sort, identify these individuals, and distribute them throughout their territories by rapidly creating “accommodation centers,” the implementation of which varied by country. While some (Italy, Greece, France, Switzerland, the Netherlands, and Austria) lagged in their creation, others (Germany, Belgium, and Sweden) quickly created thousands of accommodations,<sup>15</sup> and yet others closed down centers and settlements after the enactment of laws restricting conditions for asylum (Denmark).

Nearly all the EU member states that hosted “migrants” tried to distribute them on their territory in areas with little immigration in order to relieve congestion in the massively impacted regions. Only Germany has relied on informatics by developing the EASY (*Erstverteilung von Asylbegehrenden*, meaning “first distribution of asylum seekers”) database, which contains more than one million records on asylum seekers, including general information on their identity, nationality, and places of settlement. These data are then processed by a software program which dispatches these individuals throughout the *Länder* according to a criterion called the *Königstein* key (*Königsteiner Schlüssel*), which, among other factors, takes into account the tax revenue and the census of each region.

### 4.4.2 Analysis

The political choices regarding migration made by the EU and its member states, while being rather heterogeneous, have been influenced by common, if at times contradictory, logic.

As with other regions of the world in which migrants are concentrated, public authorities give priority to an immediate pragmatism, which in medical terms would amount to “heal the symptoms” of the “crisis” by tackling the migratory flows. In order to achieve these objectives, the terminology used and the information given at the state level tend to justify the policy pursued.

This pragmatism, generated in part by the constraint of an electoral consensus measured by daily surveys, is linked to another feature of the vast majority of the existing migration policies:

14 In many European countries, this has been the refrain repeated by public authorities at all levels. The exact phrase was, however, pronounced especially by two prime ministers: Manuel Valls (France) and Theresa May (United Kingdom).

15 “Accommodations” means living arrangements that include beds, toilets, and kitchens.

the conviction that human migration, whether economic or forced, would be a punctual and temporary phenomenon, which must be addressed within the framework of an *emergency*, as national societies refuse to consider it a structural element of their evolution. Behind this attitude, which may also be due to a lack of information and knowledge of migration history, there at times lies the fear of the *invasion*, namely the uncontrolled influx of potentially dangerous people. At the same time, policymakers seem to have little awareness that the forces at play in international migration — like economic interests, the struggle for survival, the development of the oppressed populations, huge social imbalances, and globalization — are stronger than the means they can apply to counter it.

Fear of globalization seems to attract ever-increasing attention in Europe, which tends to elect political leaders who promise to protect their populations against the harmful effects of a nation too exposed to the global circulation of people, goods, and cultures. Many ignore that this need for identity benchmarks is not limited to destination countries, but it is an exigency shared by the whole of humanity. This means that, apart from exceptional events (like natural disaster, war, and mass recruitment campaigns), human migration will always exist, but only a very small minority of people will want to move permanently to another country.

In view of these considerations, it appears that the reception of asylum seekers and refugees and the control of EU borders are taking place on the basis of immediate numerical targets (decrease in the number of admissions and camps, increase in the amount of expulsions and cases processed per day) and by using third-party organizations, via public brokers, to carry out tasks like opening centers, registering individuals, and carrying out pre-accession procedures. States that do not wish to increase the number of their officials in the field of immigration increasingly prefer to enlist private companies, whose aim is usually to satisfy their clients rather than to take into account the specific requirements of the persons affected. Despite politically correct speeches, governments generally try to reduce their share of “imposed migration,” namely the mandatory acceptance of those categories of immigrants who were awarded the right of entry in accordance with the signing of international agreements. They are therefore trying to apply as much as possible the “suspicion” criterion to asylum seekers, whose high rejection rates are considered a proof of their (migrants’) will of circumventing the law.

More optimistically, NGOs specialized in safeguarding the rights of foreigners demonstrate an increased competence; public opinion remains relatively sensitive to human rights; and some political personalities, both nationally and locally, manifest a thinking that goes against the current of their counterparts.

#### *4.4.3 Challenges and Opportunities of Migrants’ Integration: Investing in Cultural Diversity*

During the last decade, the request to shift the locus of policy making towards asylum seekers and refugees away from national governments and to the EU for a common European Asylum Policy has increased. Mainly, the focus has been on finding a common pattern of policies concerning border control, the processing of asylum claims, and agreeing upon minimum reception standards for asylum seekers. But investigating the political feasibility of deeper policy integration is both desirable and politically possible. In what ways does migration represent an opportunity for the EU? How would EU members benefit from common policies on asylum and common policies of migrant integration? Why is border closing not a viable response?



Since 2008, against the backdrop of rising global financial crisis and a recession in Europe, economic integration within Europe suffered a violent setback. Until 2007, notwithstanding regional imbalances, all the member states' economies had grown and the European integration process was proceeding relatively smoothly. This was halted by the European financial crisis, when EU institutions turned their attention to the economy and ceased their singular focus on developing common structural policies and practices in response to migration. This led economic concerns and social tensions to assume prominence in the public discourse. The perception of economic instability requires an extra effort to hasten European integration, especially at a time when European solidarity is under pressure given the massive influx of migrants. The consensus among European citizens is increasingly in favor of isolationism rather than solidarity with this group. Additionally, the controversy concerning the closure of borders in several eastern nations to curb refugee arrivals, on the one hand, emphasizes the importance the EU attaches to freedom of movement but, on the other hand, evinces the failure of member states to implement coordinated policies when it comes to national interests.

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The negative perception of migration, even where the number of refugees is very low, impacts the ability of European institutions to adopt policies of cooperation and shared responsibility.

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A recent study of Friedrich-Ebert-Stiftung Foundation in 2016 reveals that while the perceived importance of many national and international issues varies among EU nationals, topics including foreign policy, social cohesion, social security and, above all, refugees and migration are of equivalent concern across the EU. Fifty percent of respondents said that the greatest concern in Europe is refugees, with an additional 13 percent citing refugees as the issue of second greatest concern. When it comes to attitudes toward policies on refugees, the demand for a "limitation of the refugee influx" is more dominant than the request for appropriate housing, job and social integration. In many cases, fears about the influx of migrants and refugees is not supported by the facts: e.g., a modest number of refugees live in the Czech Republic and Slovakia, where concern is more widespread than in other countries, especially compared to Germany and Sweden, which are hosting a larger number of refugees. The negative perception of migration, even where the number of refugees is very low, impacts the ability of European institutions to adopt policies of cooperation and shared responsibility.

Beyond perceptions, the debate on migration must take into account demographic trends in Europe, which underscore that the role played by migration vastly differs from its portrayal in the media and by some political parties. The possible demographic shock that is likely to hit Europe needs a full and complex valuation on the economic and social outcomes because, among other things, the projection models used are not able to entirely catch the interactions between demographic changes and the individual components of economic growth and social-cultural remodeling. However, the effects of these demographic dynamics, which are likely irreversible, on economic growth of the production system and structure of the labor market and on the support of the welfare state systems of each European region, will presumably be negative in absence of an influx of migrants.

According to these considerations, alarm over the risk of facing a so-called "migration crisis" should be dissipated at least in relation to demand to compensate for the decline of the native population and its consequences on social welfare states. In the demographic model, migration has the potential to promote development for the economies of destination countries and is capable of bringing other benefits if we are able to overcome the shortsightedness of policies

oriented solely to the short-term labor market needs. Thus, if well managed, migration can represent an opportunity both for the EU and origin countries in terms of economic growth and development.

To look at migration only from an economic point of view, however, can be reductive. Migration and cultural diversity are linked and cultural diversity is a fact: its impact on social systems is probably unpredictable. Europe cannot design and realize effective integration policies without considering social and cultural differences. The challenge inherent in cultural diversity is not posed simply at the political or institutional level; it also concerns individuals, because through contact with multiple identities, people acquire a greater sense of their own identity while they also learn to be receptive to difference. Human diversity creates an opportunity to discover our individual and common humanity. Rather than conflicting with economic and social interests, migrants should therefore be understood as a resource.

Despite the difficult political conjunctures, economic and social integration remains the main way for the migrants to be a positive asset of social capital. To make this happen it takes a greater involvement both of migrants and asylum seekers as well as the territory where they are located. Knowledge, participation, activation of positive forces in the territory and fruitful exchange remain a main way.

In addition to global and European regional policies needed to cope with the current situation, local policies aimed at minimizing the negative perception of the phenomenon, especially of migrants and asylum seekers, and maximizing opportunities for social interaction, are to be encouraged. In this sense it is necessary to activate processes of participation and co-design through experiences that join migrants and local actors in the construction of a common path of integration. The experiences that Scalabrinian Missionaries activated, for example, in Rome, Siponto (Foggia), Bern, and other places, involved a network of actors and promoted numerous activities. These revolve around concepts such as acceptance, awareness, training, and active citizenship, which are fundamental to a culture of inclusion and integration.

Beyond denouncing injustice and violations of human rights — which are often the cause and effect of the migration process itself — good integration experiences must be established and promoted. The safeguarding of human dignity, participation and inclusion as the basis for the construction of the community, based on the social doctrine of the Catholic Church and on the Scalabrinian sensitivity and experience, remain as the horizon and as a concrete proposal to our society.

## 4.5 Ethical Reading: Findings for Action

If on matters such as ecology, gender equality, and social inclusion of the differently abled, states seem to be making progress in the area of consensus and ratification of specific international agreements, the question of migrants' rights seems to be frozen on an irreducible divide between the interests of sending and receiving states. For the latter group, the signing of an international convention such as the 1990 Convention "on the protection of the rights of all migrant workers and members of their families" represents a challenge to their sovereignty and to a series of economic practices applied to the immigrant workforce.

While EU policies are factually inclined to ignore a certain number of ethical issues relating to refugees and asylum seekers (as in the case of the agreement with Turkey), they are even more ready to neglect ethics in what concerns "economic migrants," regarded as people without any

rights who may just expect to be returned to their countries of origin. The so-called *hotspots* serve primarily to sort out those who “deserve” to remain on European soil and those who are not “worthy” of this destiny. This reflects a common perspective according to which the circulation of human beings is possible only based upon the explicit request of the receiving countries.

Many political leaders, supported by a growing segment of the European public opinion, say that rescues at sea merely encourage migrants to leave, while many terrorists would hide among them. From the point of view of a moral logic based on the equal dignity of all human beings, this position is untenable. Any population in danger of death must be rescued beyond the consideration of its ethnic, cultural, religious, moral or national composition.

The project of a united Europe emanates from an ideal of peace and valorization of cultures and diversities within the respect for national specificities. It is also an open secret that the “crisis” affecting the EU is above all a “spiritual” and not an economic one: The EU has lost sight of the ideals of its founders and instead has concentrated on a sort of bargaining of interests between member states (see, for instance, Leuprecht 1990). When it comes to acting together in the face of major events, such as civil wars (as in the former Yugoslavia) or massive flows of refugees, European political bodies are blocked by mutual distrust and allow individual states to act individually.

Although evidence shows that foreigners and their descendants are an integral part of European societies, institutions have difficulty taking this irreversible factor into account and creating new tools that can deal with the inevitable problems emerging within a society in constant redefinition.

No one has the miracle solution to manage a phenomenon as complex as the one rising up with the arrival of waves of migrants trying to reach the European coasts. In order to improve the situation and to look beyond the “crisis,” it is nevertheless necessary to take into consideration a certain number of points:

1. The current flow of migrants cannot be stopped by force; it is therefore useless to invest in a sort of “war on migrants.”
2. Migrants who face the dangers of the Mediterranean sea are more likely to be *real* refugees.
3. Receiving and hosting refugees is necessary and needs to be organized more systematically. But the local population should be well-informed about its progress and its (even positive) implications without any manipulation; a well-conceived and designed hosting project would optimize the benefits of migration, minimize social costs, and make it easier to target temporary accommodation sites.
4. European asylum laws and provisions are not sufficiently effective.<sup>16</sup>
5. Exiles should be invited to become actors in their reception; they also need to have the possibility to communicate with the autochthonous on their experience.
6. States should, in their own diplomatic interests, take the policy of pacifying areas of insecurity in the world more seriously.

<sup>16</sup> See, for example, the account and assessment on the European Union’s asylum policy made by Grenz, Lehmann, and Keßler (2015). Another interesting text among the vast literature on this subject is Pouly (2016).

7. Support for organizations specializing in the reception, integration, and study of migrant populations should take precedence over disproportionate investment in border control. The EU budget and corresponding European policy should be amended accordingly.
8. The fight against terrorism must be dissociated from issues relating to migrants.
9. Even though the arrival and the hosting of refugees has no significant negative impact on a state's economy, the fact of dealing with immigrants and asylum seekers in terms of "gain" or "cost" is morally unacceptable.

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## 5 The Challenges of Migration Trends and Shared Responsibility in Latin America and the Caribbean

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### 5.1 Introduction

This article provides an overview of the main characteristics of migration in Latin America and the Caribbean, including background information on trends in migration flows, the continuities and changes in migration patterns, characteristics of migrants, and national and sub-regional contexts described on the basis of census information provided mainly by the International Migration in Latin America (IMILA) Project conducted by the Latin American and Caribbean Demographic Centre (CELADE). In addition, the paper points out a number of challenges and possible shared responses by states, with a focus on six main areas or processes: ratification of international instruments to protect the rights of migrants and their families; regional processes on migration, inclusion of migration in the regional integration systems; the Agenda 2030 and its Sustainable Development Goals (SDGs); the Montevideo Consensus on Population and Development; and the Global Compact on Migration.

### 5.2 Summarized Regional Profile

Migration in the region displays long-term continuities at the same time that it shows changes in the volume and directions of flows. Allowing for country-to-country variations, the three dominant patterns of international migration in Latin America and the Caribbean since the second half of the twentieth century are extra-regional migration, historical immigration from overseas, and intra-regional exchanges.

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In Latin America and the Caribbean, there are about 30 million people residing outside their countries of birth. . .

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However, since the mid-2000s there have been indications of a decline in extra-regional migration to the main destinations — although this is not strictly reflected in the stocks — a trend that is more marked in the total Mexican migration and in the South American migration toward Spain. First, variations seem to reflect that the trend is contingent, taking into account, however, that they have been observed over a brief period of time. Second, immigration of people from other regions is still strong, but it is consistently decreasing with respect to the trends observed in previous decades. Thirdly, migration flows within the region have intensified, including irregular migration and mixed flows.

In Latin America and the Caribbean, there are about 30 million people residing outside their countries of birth, with more than the 26 million recorded in the 2000 round of censuses.<sup>1</sup> This number of emigrants is equivalent to approximately 4 percent of the total population of Latin America and the Caribbean (see Table I). The total stock of migrants is made up, on the one hand, of the population born in Latin America and the Caribbean countries living in other regions and, on the other, of the native population living in countries other than their country of birth within the region.

**Table I. Latin America and the Caribbean: Immigration and Emigration with Respect to the Total Population by Country of Residence and Birth, around 2010**

*(Minimum estimates in thousands of people and in percentages)*

Country	Total Population	Immigrants		Emigrants	
		Number	Percentage of Total Population	Number	Percentage of Total Population
Total Latin America and the Caribbean	703,437	7,564	1.1	28,467	4.0
South America	509,865	4,756	0.9	8,398	1.6
Argentina	40,117	1,806	4.5	710	1.8
Bolivia (Plurinational State of)	10,027	128	1.3	686	6.8
Brazil	190,756	592	0.3	874	0.5
Chile	17,135	320	1.9	429	2.5
Colombia	41,468	110	0.3	1,976	4.8
Ecuador	14,483	182	1.3	995	6.9
Guyana	761	12	1.5	374	49.2
French Guiana	231	108	46.5	1	0.4
Paraguay	6,460	161	2.5	688	10.6
Peru	27,412	64	0.2	981	3.6
Suriname	524	39	7.5	4	0.7
Uruguay	3,286	77	2.3	242	7.4
Venezuela (Bolivarian Republic of)	27,228	1,157	4.2	439	1.6
Central America	152,812	1,672	1.1	15,550	10.2
Belize	313	47	15.0	6	1.9
Costa Rica	4,302	386	9.0	111	2.6
El Salvador	5,744	37	0.7	1,316	22.9
Guatemala	14,377	59	0.4	919	6.4
Honduras	7,616	24	0.3	611	8.0
Mexico	111,960	968	0.9	11,863	10.6
Nicaragua	5,119	33	0.6	597	11.7

1 The estimate of emigrants covers only the intraregional destinations and the United States, Spain, Canada, and Japan. When adding the estimated amount of Latin American and Caribbean migrants in other countries of the OECD toward 2005–2006, the total amounts to 29.6 million (OECD 2012).

**Table I (cont.). Latin America and the Caribbean: Immigration and Emigration with Respect to the Total Population by Country of Residence and Birth, around 2010**

Country	Total Population	Immigrants		Emigrants	
		Number	Percentage of Total Population	Number	Percentage of Total Population
Panama	3,381	117	3.5	126	3.7
Caribbean <sup>a</sup>	40,760	1,135	2.8	4,519	11.1
Netherlands Antilles	201	53	26.4	2	0.9
Bahamas	346	33	9.7	1	0.4
Barbados	257	28	10.9	18	7.0
Cuba	11,204	15	0.1	1,297	11.6
Dominican Republic	9,445	396	4.2	1,070	11.3
Guadalupe	467	105	22.5	0	0.1
Haiti	10,188	35	0.3	994	9.8
Jamaica	2,730	30	1.1	803	29.4
Martinique	406	71	17.6	1	0.2
Puerto Rico	3,998	324	8.1	10	0.2
Santa Lucia	174	10	5.9	22	12.4
Trinidad and Tobago	1,344	34	2.6	301	22.4

Source: IMILA Project conducted by CELADE and the Population Division of the United Nations.

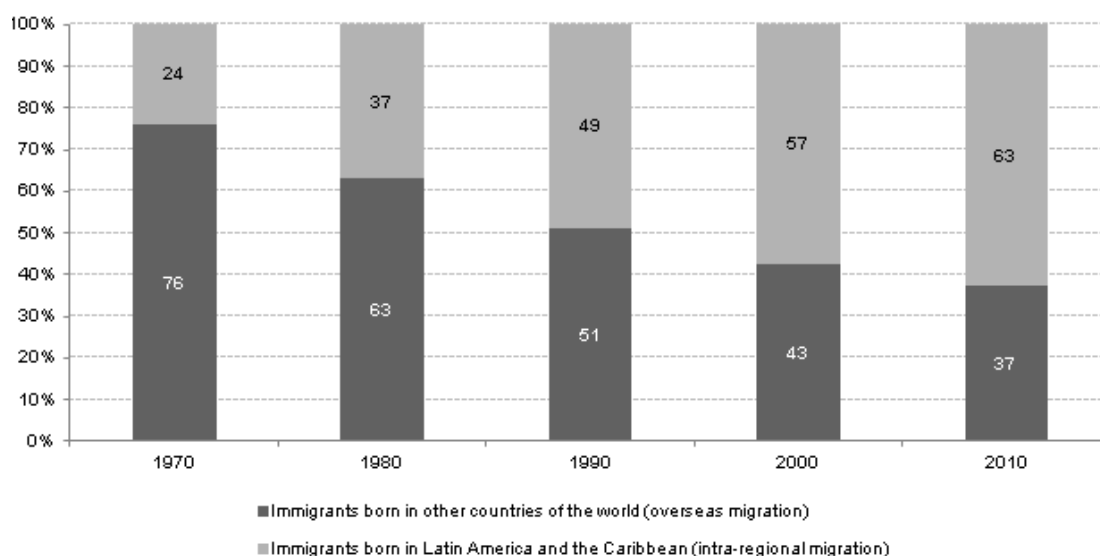
Note: Data from the 2010 round of censuses in the cases of Argentina, Bolivia (Plurinational State of), Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, Nicaragua, Panama, Peru, Dominican Republic, Uruguay and Venezuela (Bolivarian Republic of) were obtained from the IMILA database. In all other cases, the figures are from the UN Population Division. The estimates of emigrants are negligible, as they record a limited number of countries in Europe and Oceania.

<sup>a</sup> Anguilla, Antigua and Barbuda, Aruba, Bermuda, Cayman Islands, Dominica, Grenada, Montserrat, St. Kitts and Nevis, Saint Vincent and the Grenadines, Turks and Caicos Islands, the British and US Virgin Islands are not included.

In net terms, accumulated immigration in the region continues to be smaller than emigration. The total figure of the foreign population living in Latin America and Caribbean countries amounted to 7.6 million people in 2010, which is equivalent to roughly a quarter of all emigrants and only 1.1 percent of the total population of the region. The total stock of immigrants must also be analyzed on the basis of its two components: overseas immigration and the immigration of populations born in Latin America and the Caribbean (in this calculation, those born in the United States are part of the overseas component). While the first component represents 37.2 percent of the immigrant population and continues to lose relative importance, the second represents 62.8 percent of this population and continues to grow in comparison to previous decades (see Figure I).

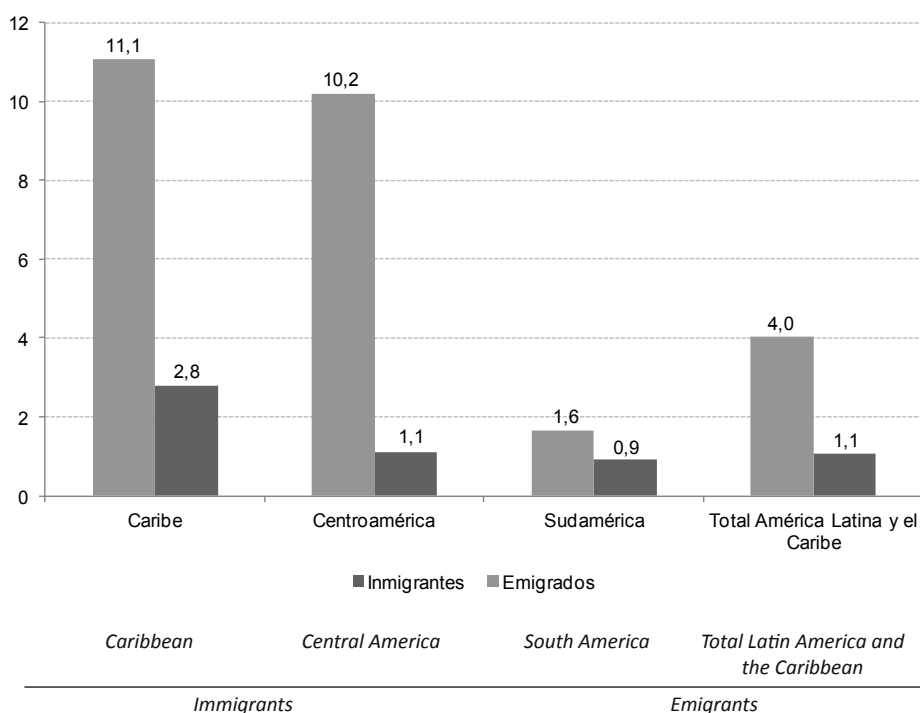


**Figure I. Latin America and the Caribbean: Percentage of Immigrant Population According to Origin, 1970 to 2010**



Source: IMILA Project conducted by CELADE.

**Figure II. Latin America and the Caribbean: Immigrants and Emigrants as a Percentage of Total Populations, by Subregion, around 2010**



Source: IMILA Project conducted by CELADE and the Population Division of the UN, on the basis of Table I.

Note: For the Caribbean, Anguilla, Antigua and Barbuda, Aruba, Bermuda, Cayman Islands, Dominica, Grenada, Montserrat, St. Kitts and Nevis, Saint Vincent and the Grenadines, Turks and Caicos Islands, the British and US Virgin Islands are not included.

As shown in Figure II, the proportion of the immigrant population with respect to the native population is more-or-less the same in the different sub-regions of Latin America and the Caribbean, and ranges between 0.9 percent and 2.8 percent. Emigration, however, displays marked variations by sub-region. The Caribbean and Central America show a particularly high proportion of immigrants in relation to the native population (11.1 percent and 10.2 percent, respectively).

According to the analysis by country, Mexico accounts for a very significant portion of the regional migration (almost 40 percent), with about 12 million of its citizens living abroad, the overwhelming majority of them in the United States. As Table I illustrates, Colombia, El Salvador, and Cuba have respectively two, 1.3 and 1.3 million nationals living abroad. In turn, Organisation for Economic Development and Co-operation (OECD) (2012) figures indicate that the number of emigrants from Ecuador, (the Plurinational State of) Bolivia, Paraguay, and Uruguay living in countries in the OECD region almost doubled between 2000 and 2005 (see Table II). In general, this information is not easy to upgrade, although according to the OECD (2016), there are possibilities of a further decline of emigration, mainly to Spain, from countries such as Colombia, Argentina, and Bolivia. A similar trend was observed in Italy for emigration from Peru and Brazil (ibid.).

It should be noted that there has been a significant decline in the annual flow of Mexican migrants to the United States, a fact that has been observed since the 2008–2009 crisis, and an increase in those returning, a process that has led to a decline or stabilization in the number of Mexican immigrants in the country in the past few years, a tendency still difficult to define (according to the American Community Survey [ACS]) and other sources (ACS 2016; Passel 2016; González-Barrier 2015)). In contrast, the emigration from the countries of the Northern Triangle of Central America (NTCA), i.e. Guatemala, Honduras, and El Salvador, shows a steady increase in the stock of immigrants living in the United States. Despite the reduction in the flows between 2006 and 2011, in recent years (2013–2016), there has been a strong increase with greater involvement of migrant minors, accompanied and unaccompanied children, as well as women (Rodríguez 2016). Also, in the last five years an increase in the number of underage migrants from the islands of the Caribbean, Cuba, the Dominican Republic, and Haiti has been observed.

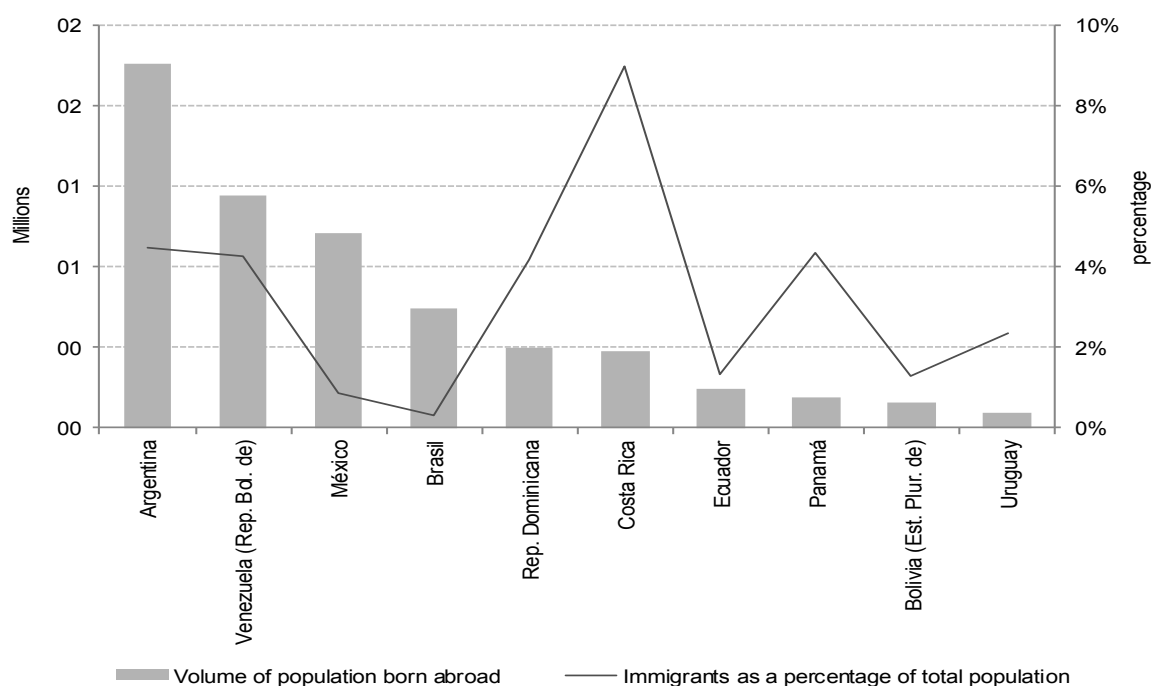
According to the OECD, in its 2016 *International Migration Outlook*, there is also evidence of a decline of immigration from Latin America and the Caribbean in Europe, especially in Spain with regards to immigrants from Ecuador, Colombia, Argentina, Bolivia, and the Dominican Republic. A similar trend is being observed in Italy for emigration from Peru and Brazil (OECD 2016).

On the other hand, the general situation of regional immigration is becoming more complex, whereby the most dramatic facts are the rapid increase in the emigration of Venezuelans, especially toward the United States, Mexico, Spain, and other countries; the growth of immigration to Chile (which has not been a traditional recipient country); the emergence of Brazil as a new destination for Haitian migration from 2010 to 2014 following the 2010 earthquake, and for emigrants from African or Asian countries facing economic crises and armed conflicts, mainly Angola, Bangladesh, Congo, Syria, and Senegal; the strong increase in Cubans leaving the island and migrating to other countries; and the restoration of or the new phase in US-Cuba relations and possible change in immigration policy.

The main recipients in absolute numbers are Argentina, Venezuela (as part of the cumulative volume of Colombian migration in past decades), Mexico, and Brazil. In terms of recent flows, it is worth noting that Argentina, Brazil, Chile, and Mexico have the highest rates of migration flows (OAS and OECD 2015; OECD 2016). It must be said that the relative share of immigrants compared to the national population does not necessarily correspond with this *ranking*, because the total volumes of native population vary greatly. Thus, for example, although Mexico receives among the largest number of immigrants — almost a million people — they represent less than 1 percent of the population. In Costa Rica, on the other hand, the 385,000 immigrants recorded by the census represent 9 percent of the total population, the highest percentage in the region (see Figure III).

It should be clarified that more than half of the immigrant population in Mexico is of Mexican origin, which can be explained by the fact that many are children of Mexican parents who are sent back to the same household. This fact has much to do with the dynamics of life on the border between the country and the United States and the effects of migratory processes (Rodríguez 2010).

**Figure III. Latin America and the Caribbean (Available Countries): Volume and Proportion of Immigrants in Relation to the Total Population, According to Country of Residence, around 2010**



Source: IMILA Project conducted by CELADE.

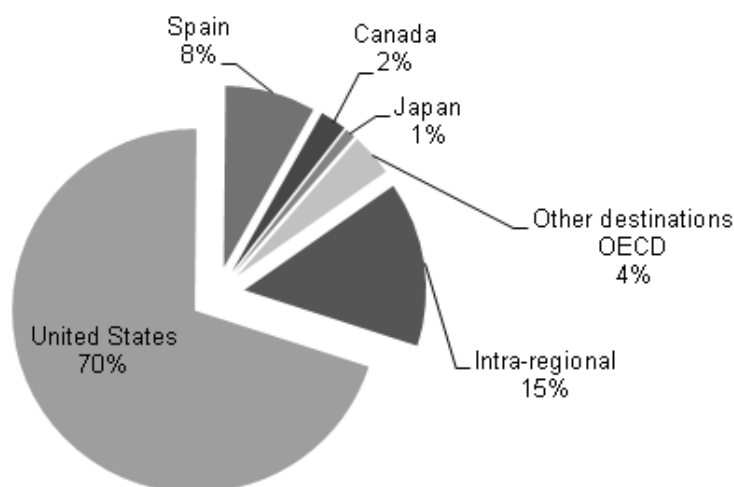
### 5.3 The Decrease in Extra-regional Migration: A Circumstantial Trend?

The United States is the main destination for regional migration. This has been a long-term trend. In 2000, some three-quarters of the migrant population from Latin America and the Caribbean resided in the United States, while, for example, other countries of the OECD — including Spain, Canada, and Japan — attracted only 13 percent (OECD 2012). However, after the global financial crisis there was a decrease in regional migrant flows toward the United States in 2015, although it still continues to be the main destination for people from many different countries of origin. This apparent decline, which does not include the Northern Triangle of Central America (NTCA) countries, is paradoxical if one considers the persistence of the expulsion factors in several other countries, which creates a need for refuge, as evidenced in the situation of unaccompanied migrant minors and women with young children.

As seen in Figure IV, in 2010 the United States had 70 percent of the total of Latin American and Caribbean migrants, which is equivalent to a sizable 20.8 million people. Even without counting the population from Mexico — which adds up to approximately 11 million (CMS 2016) — the United States continues to be the main destination, although in that case only with a slight majority (see Figure V).

#### Figure IV. Major Destinations for Migrants from Latin America and the Caribbean, around 2010

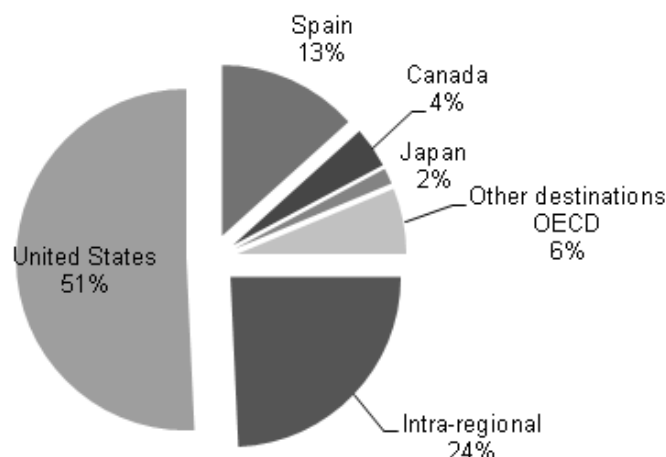
*(In percentages)*



Source: IMILA Project conducted by CELADE and OECD (2012).

## Figure V: Main Destinations for Migrants from Latin America and the Caribbean Excluding Mexicans in the United States, around 2010

(In percentages)



Source: Project IMILA CELADE and OECD (2012).

Note for both graphs: The figures are based on national census data. The estimate of migrants in other OECD countries is taken from the database of that organization for the period 2005–2006 and only covers 22 countries of Latin America and the Caribbean — Argentina, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of).

After the United States, Spain is the second most important extra-regional destination, bringing together 8 percent of the total number of emigrants from the region in 2011 (equivalent to 2.4 million people) (OECD 2016).

Canada, the United Kingdom, and Japan figure as emerging destinations according to the 2000 round of censuses and, as reflected in 2010 data, emigration toward these destinations has continued, although it has not grown as steadily as might have been expected from the situation in the previous decade. According to the OECD (2016), between 2000 and 2005 Canada went from hosting 3.5 percent of all Latin American and Caribbean migrants in the OECD area to hosting 6.4 percent. According to the same document, toward 2005–2006, Italy emerged as one of the top five destinations for migrants from Latin America and the Caribbean, now placed above the United Kingdom. In turn, 15 percent of regional migrants live in other countries of Latin America and the Caribbean, as drawn from the 2010 round of censuses.

Overall, the information available points to reduced flows of migrants from several countries (not all) to regions outside Latin America and the Caribbean. Several factors come together in this regressive trend, but the common denominator is the impact of transformations in the labor market and the wage crisis, which function as deterrents for new migrants. Other factors, such as tax cut measures, specific directives on entry to the territories and a number of difficulties now facing settled migrants (known as an “anti-immigration climate”) also help to explain the decrease in immigration (Martínez Pizarro, Reboiras, and Soffia 2009).



## 5.4 Some of the Features of Migrants from the Region in OECD Countries

The population of immigrants from the region living in OECD countries remains predominantly female, as was already evidenced at the beginning of the 2000s (see Table II). In 2005–2006, for example, 66.5 percent of Panamanians living in OECD states were male. A significant variation in the group of migrants from Bolivia (Plurinational State of) stands out, as it went from almost 92 men for every 100 women to 78 between 2000 and 2005–2006.

**Table II. Latin America (Selected Countries): Population 15 Years Old and over Residing in OECD Countries According to Sex, 2000 and 2005–2006**

Country of birth	Population 15 years old and over In the countries of the OECD <sup>a</sup>			Masculinity Rate	
	2000	2005-2006	Variation (%)	2000	2005-2006
Argentina	389,100	639,000	64.2	92.5	94.5
Bolivia (Plurinational State of)	87,700	193,200	120.3	91.9	78.4
Brazil	554,800	867,200	56.3	85.2	88.5
Costa Rica	76,300	96,600	26.6	86.6	98.4
Ecuador	512,000	1,066,800	108.4	99.6	94.6
Panama	140,300	150,700	7.4	66.4	66.5
Paraguay	21,100	44,700	111.8	81.9	88.2
Dominican Republic	695,600	841,000	20.9	75.9	72.3
Uruguay	80,900	153,000	89.1	94.5	88.0
Venezuela (Bolivarian Republic of)	237,800	351,300	47.7	86.4	88.2

Source: OECD (2012).

<sup>a</sup> approximate figures in thousands.

In the particular case of emigration from Latin American and Caribbean countries to the United States, the stocks, strongly influenced by the Mexican migration, have had a greater presence of males during the last three decades (1990 to 2010). Emigrants living in Spain, however, follow the general trend of a greater predominance of women. The participation of women in this country is even more marked and has been growing gradually since the 1970s. In 2010, the masculinity rate recorded up to 73 men for every 100 women. These differences in the composition of the migrant stocks tend to be associated with the employment niches in which they participate, which vary from region to region. In the United States, for example, the construction industry actively absorbs foreign low-skilled workers and has traditionally employed men. In Spain, on the other hand, a society with an increasingly aging population, the care sector employs large numbers of immigrant women.

The analysis of the age structure, on the other hand, indicates that migrants between the ages of 25 and 64 accounted for 76 percent of all migrants in the region in the 2005–2006 period (see Table III). The proportion of younger migrants (between 15 and 24 years) decreased for all the selected countries of origin, except for Bolivia and Uruguay. At the other end, the population 65 years old and over increased their share in the cases of Costa Rica, Panama, the Dominican Republic and Venezuela (Bolivarian Republic of). With regards to the groups from Argentina, Costa Rica, and Panama, the proportion of older people exceeded 10 percent, which is a possible indicator that migration flows from these countries are not as recent as from the rest.

As Table IV indicates, the education level of the population under study has tended to rise. Thus, between 2000 and 2005–06, the proportion of immigrants in OECD states with low formal education decreased for all selected countries, with the sole exception of Bolivia (Plurinational State of). On the other hand, the proportion of migrants with high level of schooling increased for most countries, again with Bolivia (Plurinational State of) among the exceptions, in addition to Uruguay, which has decreased by almost four percentage points, and Ecuador, which remained rather stable (see Table IV). However, at the regional level, the highly skilled population represented about one-third of the total according to the OECD (2012), and international students made up an important part of this group.

**Table III. Latin America (Selected Countries): Population 15 Years Old and over Residing in OECD Countries According to Broad Age Groups, 2000 and 2005–2006**

Country of birth	Population 15 years old and over, living in OECD countries <sup>a</sup>		15 to 24 years (%)		25 to 64 years (%)		65 years and older (%)	
	2000	2005/06	2000	2005/06	2000	2005/06	2000	2005/06
Argentina	389,100	638,900	13.8	12.6	72.5	76.2	13.7	11.2
Bolivia (Plurinational State of)	87,700	193,200	18.7	19.3	75.3	76.5	6.0	4.3
Brazil	554,800	867,200	21.4	18.4	74.4	78.2	4.2	3.4
Costa Rica	76,400	96,600	17.3	13.7	75.1	76.3	7.6	10.0
Ecuador	512,100	1,066,800	20.7	18.7	74.9	77.3	4.5	4.0
Panama	140,400	150,800	12.5	11.0	76.1	73.0	11.5	16.0
Dominican Republic	695,500	841,000	16.6	15.4	76.5	75.1	6.9	9.5
Uruguay	80,900	153,100	8.3	10.8	81.8	80.3	9.8	8.9
Venezuela (Bolivarian Republic of)	237,800	351,300	21.0	17.2	76.6	79.8	2.4	3.0

Source: OECD (2012).

<sup>a</sup> approximate figures in thousands.

**Table IV. Latin America (Selected Countries): Population 15 Years Old and over Living in the OECD Countries, According to Educational Level, 2000 and 2005–2006**

Country of birth	Population 15 years and over, living in OECD countries <sup>a</sup>		Low level of education (%)		High level of education (%)	
	2000	2005-2006	2000	2005-2006	2000	2005-2006
Argentina	389,100	638,900	30.9	25.3	32.7	37.5
Bolivia (Plurinational State of)	87,700	193,200	28.5	30.8	28.0	24.3
Brazil	554,800	867,200	31.9	29.7	27.2	28.2
Costa Rica	76,400	96,600	31.5	26.5	24.7	27.8
Ecuador	512,100	1,066,800	48.6	45.3	15.3	15.0
Panama	140,400	150,800	17.0	12.5	32.9	37.7
Dominican Republic	695,500	841,000	53.3	43.6	12.4	16.4
Uruguay	80,900	153,100	33.7	33.0	28.3	24.8
Venezuela (Bolivarian Republic of)	237,800	351,300	27.1	21.3	36.8	44.2

Source: OECD (2012).

<sup>a</sup> approximate figures in thousands.

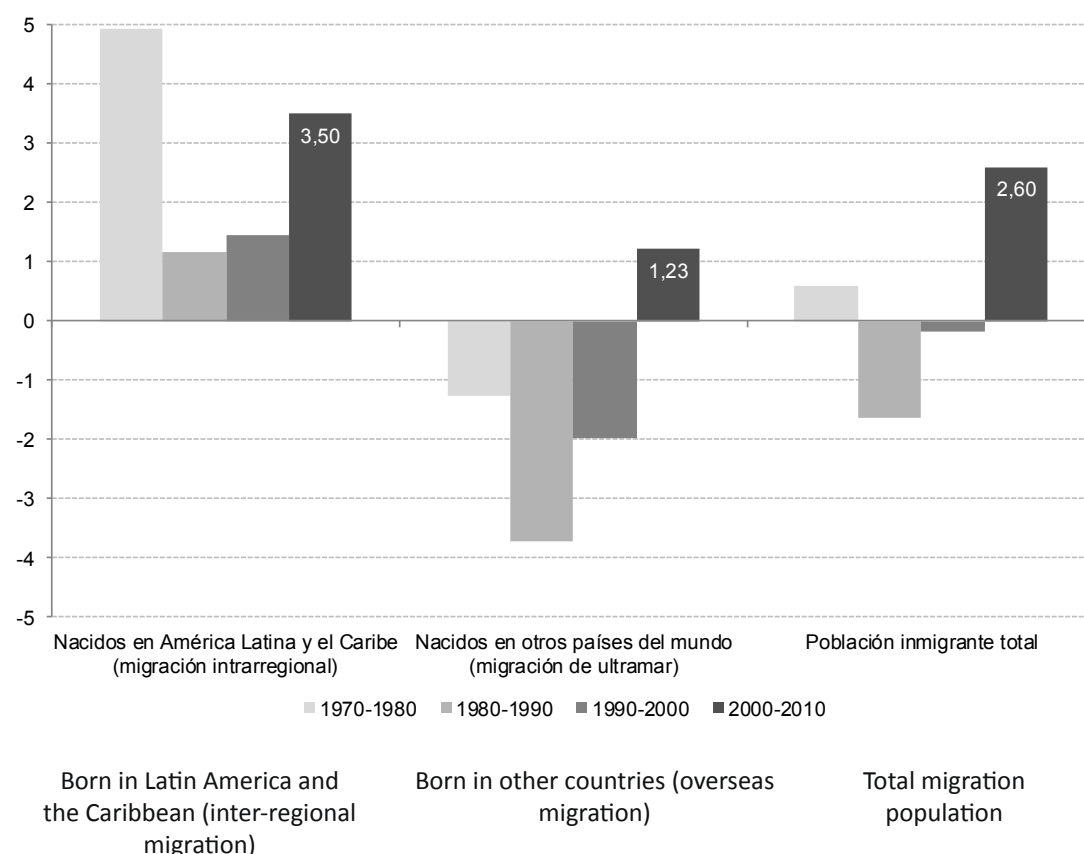
## 5.5 Overseas Immigration: Some Indications of Its Permanence?

The pattern of overseas migration — i.e., from outside of the region — to the countries of Latin America and the Caribbean goes back to the beginning of European colonization in the sixteenth century. Overseas migration to the region has been losing its relative importance, at least since the second half of the twentieth century, in relation to the higher incidence of intra-regional migration. The last census information available indicates that the percentage of extra-regional immigrants reached 37.2 percent of the total number of immigrants in Latin America and the Caribbean. If this trend were to continue, it is expected that in the next decade the situation will be practically reversed with regards to what was happening toward 1970, when the extra-regional immigrants accounted for at least three quarters of the total migration in the regions (see Figure I).

However, the loss of dynamism in overseas immigration must be nuanced. Migrants from other regions make up a minority in the Latin American territory, and while during the previous decades a decrease in their stocks was recorded (see Figure VI), between 2000 and 2010 this group has increased at an annual rate of 1.23 percent.

**Figure VI. Latin America and the Caribbean: Growth Rate of Immigrant Population According to Origin, 1970–2010**

(In percentages)



Source: IMILA Project conducted by CELADE.

In Argentina, Brazil, Ecuador, and Uruguay the number of immigrants born out of the region decreased between 2000 and 2010 (see Table V). In contrast, the stocks of extra-regional immigrants grew at unprecedented rates during the same period in countries such as the Dominican Republic, with an annual increase of 11.3 percent; Bolivia (Plurinational State of) with 7.4 percent; Mexico with 7.1 percent; and Panama with 6.2 percent. There are some countries in which the number of extra-regional immigrants increased at an even greater rate than that from Latin American and Caribbean countries, particularly in Central America.

It is very likely that the return of emigrants with their foreign-born children can account, in part, for this situation. In the same way, the economic crisis in the northern countries of the American continent, more restrictive immigration and permanent residency policies, and the anti-immigration climate have contributed to position the region as an alternative migration destination. This would explain, for example, an incipient arrival in the region of mainly highly skilled immigrants from some countries in Europe and North America who, although arriving in small numbers and only for a short period of time, are having an impact in several countries, such as those of the southern cone.

**Table V. Latin American and the Caribbean (Available Countries): Stocks, Percentages, and Growth Rates of the Immigrant Population According to Origin, 2000 and 2010**

Country of residence	2000			2010			Annual Growth Rate 2000-2010		
	Total foreign-born	Born in LAC COUNTRIES (%)	Born in other countries (%)	Total foreign-born	Born in LAC COUNTRIES (%)	Born in other countries (%)	Total foreign-born	Born in LAC COUNTRIES	Born in other countries
Argentina	1,517,904	67.8	32.2	1,805,957	80.3	19.7	1.74	3.42	-3.15
Bolivia (Plurinational State of)	87,338	82.8	17.2	127,645	75.2	24.8	3.79	2.84	7.44
Brazil	683,830	20.7	79.3	592,393	30.4	69.6	-1.44	2.40	-2.74
Costa Rica	296,461	91.7	8.3	385,899	91.4	8.6	2.64	2.60	3.03
Ecuador	150,565	49.2	50.8	194,398	70.1	29.9	2.56	6.11	-2.76
Mexico	492,248	17.0	83.0	968,271	13.9	86.1	6.77	4.73	7.13
Panama	82,097	63.9	36.1	148,779	63.1	36.9	5.95	5.82	6.17
Dominican Republic	96,229	78.7	21.3	395,791	84.0	16.0	14.14	14.79	11.28
Uruguay	92,378	50.0%	50.0	77,003	62.9	37.1	-1.82	0.47	-4.79
Venezuela (Bolivarian Republic of)	1,015,538	73.0%	27.0	1,156,581	73.6	26.4	1.30	1.39	1.06
Total	4,514,588	57.3%	42.7	5,852,717	62.8	37.2	2.60	3.50	1.23

Source: IMILA Project conducted by CELADE.

The case of immigration from Spain is, perhaps, the one that has dominated the public perception about the arrival of Europeans into the region. However, the 2010 census figures do not provide hard evidence and, rather, reveal a 22 percent decrease in the number of Spanish-born residents in Latin American and Caribbean countries, compared to 2000. In Uruguay and in the main immigrant destination states — Argentina, Venezuela (Bolivarian Republic of), Brazil, and Panama — there has, in fact, been a decrease in the stocks of Spanish immigrants (see Table VI). In contrast, the considerable increase of Spanish immigrants in Bolivia (Plurinational State of) (650 percent), Ecuador (350 percent), Mexico, Venezuela (Bolivarian Republic of) and Brazil. There has been an increase in the percentage of Spanish migrants who have arrived in the five years prior to the census between 2000 and 2010, and a decrease of those who arrived in previous periods (see Figure VII). It can be supported with the most recent data, which indicate an increase in flows that are not yet reflected in the 2010 census, such as an increase in the amount of Spaniards who have been granted residence permits in Chile, Colombia, and Mexico as main destinations (OAS-OECD 2015). Information from the same source also provides evidence of a gradual increase of immigrants from China, the United States, Italy, and other Western European countries in the region. In any case, this is a very incipient migration and has to be followed up in later censuses and supplemented with local data from other sources. In addition, it is pertinent to note that although overseas immigration, especially of Spaniards, has increased in recent years due to the global economic crisis, its current level is still hardly significant in comparison with the high levels of emigration from Latin American and Caribbean countries on the old continent.



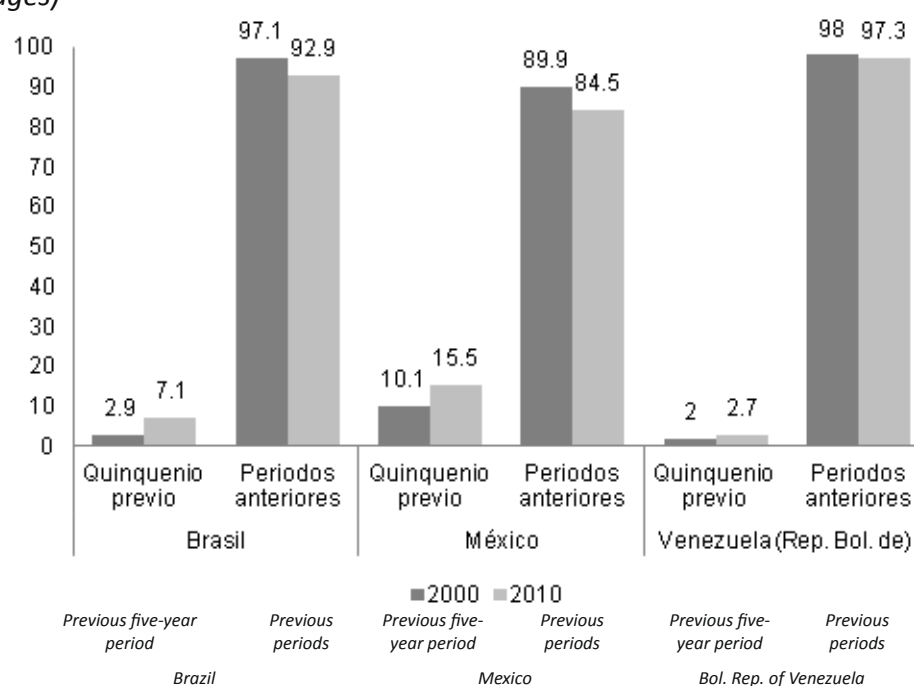
**Table VI. Latin America (Selected Countries): Stocks and Percentage of Intercensal Growth of Immigrants Born in Spain, 2000 and 2010**

Country of residence	2000	2010	Growth Intercensal rate (%)
Argentina	134,417	94,030	-30,0
Bolivia (Plurinational State of)	1,450	10,906	652.1
Brazil	43,604	30,736	-29,5
Costa Rica	1,623	1,806	11.3
Ecuador	3,099	13,993	351.5
Mexico	21,309	20,727	-2.7
Panama	2,468	2,414	-2.2
Dominican Republic	2,430	6,691	175.3
Uruguay	21,594	12,667	-41,3
Venezuela (Bolivarian Republic of)	76,654	46,463	-39.47
Total Countries	308,648	240,433	-22,1

Source: IMILA Project conducted by CELADE.

**Figure VII. Latin America: Main Countries with Presence of Spaniards Who Arrived during the Five Years Prior to the 2000 and 2010 Censuses and Previous Periods**

(In percentages)



Source: Processing of census microdata.

## 5.6 Intensification of Intra-regional Exchanges

Immigrants from the region itself are a majority in contrast with those originating overseas. The 2010 census data — available for 10 countries — reveals that intra-regional immigrants account for 63 percent of the total immigration, which corresponds to almost 3.7 million people (see Table V). This is a general trend, with the sole exceptions of Brazil and Mexico, where the extra-regional overseas immigration is of greater importance, and represents 70 percent and 86 percent of immigrants, respectively (see Figure VIII).

In terms of stocks, Argentina, Venezuela (Bolivarian Republic of), Costa Rica, and the Dominican Republic are the countries that display the highest volumes of regional immigrants. The increase in intra-regional flows allows for multiple readings, although there is a more-or-less direct association between some degree of relative economic stability and the status of the receiving countries, especially with regards to neighboring countries.

Toward 2000, there was an actual expansion of migration within the region. An increase in the annual growth rates of the stocks of migrants born in Latin America and the Caribbean was observed in all selected countries, which indicates the significant effect of intra-regional migration exchanges. Although the stocks of overseas migrants also showed a growth in at least six of the 10 selected countries (see Figure IX), the annual growth rate of this population at the regional level (1.23 percent) was significantly lower than that of the intra-regional immigrants, equivalent to 3.5 percent.

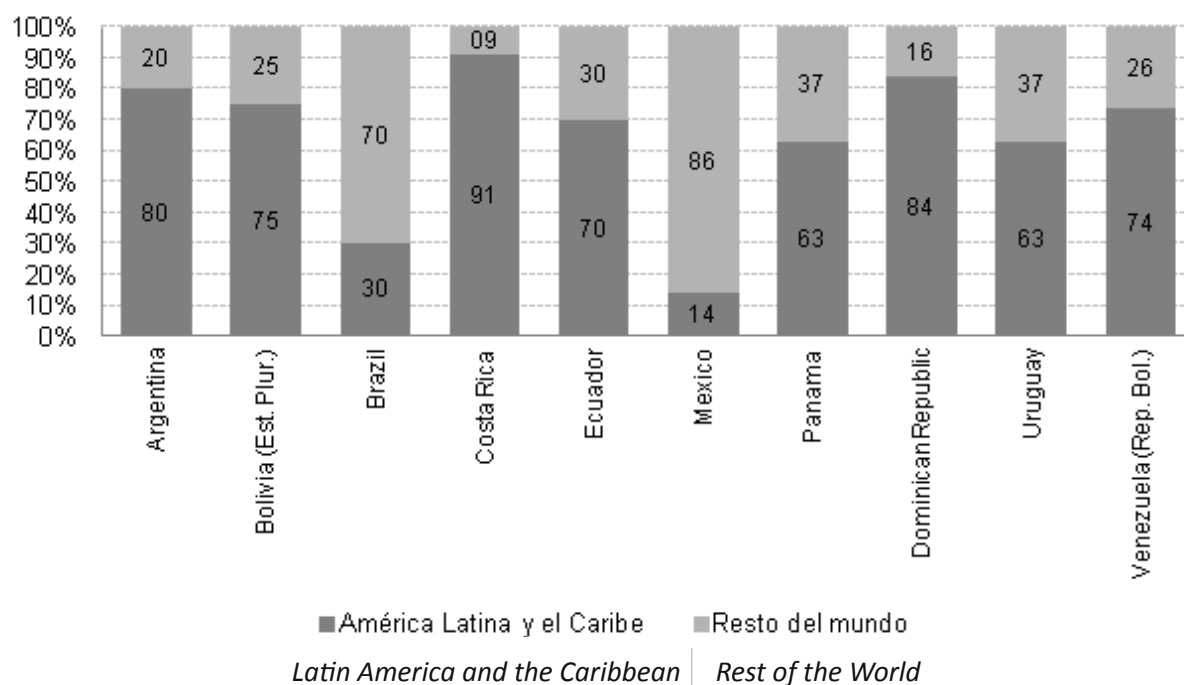
The intensification of intra-regional immigration is part of a trend that started several decades ago (CEPAL 2002; Martínez Pizarro 2008). At present, it is well known that these movements — some of them recorded by the census — are related to job opportunities, such as temporary mobility and border transit, while other modalities are not strictly related to labor and display a complex typology in which indigenous mobility, unaccompanied migrant children, and the search for refuge — associated with irregularity, human trafficking, and migrant smuggling — are characterized as mixed migrant flows. In addition, immigration from the region has never ceased to grow. What is striking is that for at least two decades (1980 to 2000) it registered a growth rate of just over 1 percent and the most recent data show that it has an accelerated growth of 3.5 percent over the last decade.

Part of the increase in intra-regional migration in the MERCOSUR region may have been promoted by the conditions set forth among the countries of the agreement easing the “settlement” of migrants in other signatory countries.

The situation that remains constant is that the main group of origin always belongs to a neighboring country in the region. The only exception is that of migrants coming from Portugal into Brazil, who, although they continue to be the first majority, are the only ones who recorded a 35 percent decrease in their stock. The migration from the United States to Mexico also experienced an important growth with respect to 2000 (see Figure VII).

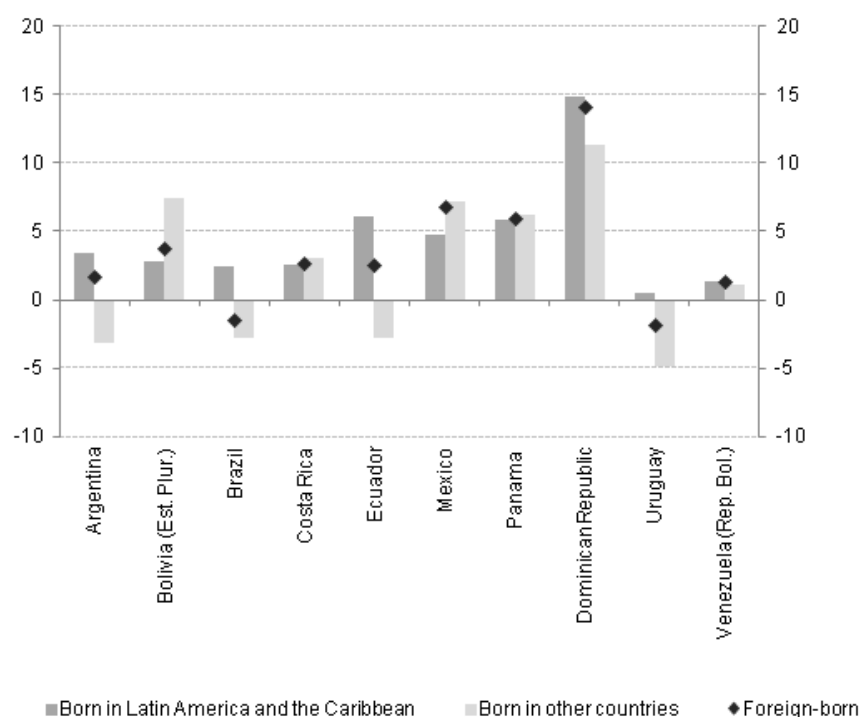
Aside from the case of the United States and Mexico, some noteworthy border migration flows within the region for their volume are those from Haiti to the Dominican Republic, Nicaragua to Costa Rica, and Colombia to Venezuela (Bolivarian Republic of). In all these countries of destination, the stock of migrants from neighboring countries constitute more than 70 percent of the total (see

**Figure VIII. Latin America and the Caribbean (Available Countries): Percentage of Immigrant Population According to Origin, around 2010**



Source: IMILA Project conducted by CELADE.

**Figure IX. Latin America and the Caribbean (Available Countries): Growth Rates of Immigrant Population According to Origin, 2000–2010**



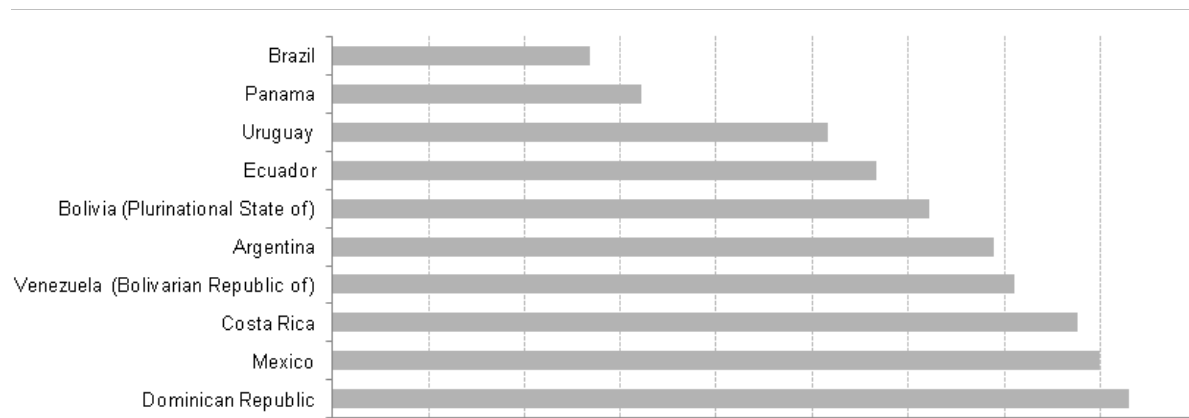
Source: IMILA Project conducted by CELADE.

**Table VII. Latin America and the Caribbean (Selected Countries): Stocks and Percentage Change According to Main Group of Immigrants, around 2000 and 2010**

Country of presence	Main country of immigration	Stock around 2000	Stock around 2010	Percentage variation
Argentina	Paraguay	322,962	550,713	70.5
Bolivia (Plurinational State of)	Argentina	27,094	38,165	40.9
Brazil	Portugal	213,203	137,972	- 35.3
Costa Rica	Nicaragua	226,374	287,766	27.1
Ecuador	Colombia	51,556	89,931	74.4
Mexico	United States	358,399	739,918	106.5
Panama	Colombia	21,069	37,383	77.4
Dominican Republic	Haiti	61,863	311,969	404.3
Uruguay	Argentina	26,256	26,782	2.0
Venezuela (Bolivarian Republic of)	Colombia	609,196	721,791	18.5

Source: IMILA Project conducted by CELADE.

**Figure X. Latin America and the Caribbean (Selected Countries): Immigrants Born in Neighboring Countries as Percentage of Total Population, around 2010**



Source: IMILA Project conducted by CELADE.

## 5.7 Main Challenges of Migration in Latin America and the Caribbean

The situation described above as well as the extended vulnerability of migrants, both before and during their journeys, in their destination and when returning under forced conditions, is a clear indication that societies in the region are facing major challenges which require strengthening cooperation and taking into account the active participation of civil society.

First, the general determinant factors of migration originate in vast international structural asymmetries, which can be easily identified in the unequal levels of development, the depth of which generate an unjust and exclusionary division of labor. This is a constant trend in all countries in which inequality and the lack of job opportunities, although at different levels, become a hindrance for the development of options based on the needs of increasingly larger groups.

These situations are reflected in the discontinuous expansion of formal employment, which has resulted in the labor precariousness that is so characteristic of the region. Low wages, precariousness and lack of decent and dignified jobs conspire against the retention of residents and legitimize decisions to migrate at any cost. This factor alone explains to a large extent the persistence of migration in several countries, and lends support to the interpretation of the determinants of immigration in those countries with the greater opportunities.

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...intra-regional migration is the greatest opportunity for peaceful coexistence and comprehensive human development in the region.

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From the point of view of social factors, kinship and social networks in the region play a very important role in maintaining and facilitating migration. On the other hand, social networks act as a counterpoint to the threat of violence and human trafficking posed by organized crime. Additionally, networks are intensely active in the migration of women and relatives of disappeared migrants from Central America.

The increase in the migration of boys, girls, and adolescents — whether accompanied or unaccompanied — especially in the migratory corridor between Central America, Mexico, and the United States, is perhaps the main issue in which all the above factors can be identified. The implementation of appropriate protocols to address these issues is of pressing urgency. Criminal activities such as smuggling of migrants and human trafficking are constant in the region and occur also in the intra-regional corridors of Haitian migrants smuggled to Brazil and, subsequently, to Mexico, Chile, and the United States, in conjunction with the smuggling of migrants from Asian and African countries — especially Congo and Ghana — to Mexico, with the intention of crossing them over into the United States.

The increase of Haitian migration after the earthquake of 2010 and in general the natural disasters affecting this country require a comprehensive strategy of active and effective cooperation with this nation to address its problems. At the same time, Haitian migration shares some of the dynamics and complexity of the Venezuelan situation, indicating that the border conflicts between Colombia and Venezuela, with the closure of borders by the Venezuelan government, are only an expression of the difficulties facing the governance of migration between the two countries.



The countries of the region would have to share more effectively both common interests and responsibilities in the face of migration. This is the lesson learned from the deportations and forced return from the United States to Latin American countries, where, in general, a lack of timely, comprehensive, and efficient social and labor reinsertion programs for the deportees can be observed.

What can be expected from the tightening of border controls, building the wall, and large-scale deportations promised by the new administration in the United States, the main destination of migration from Latin America and the Caribbean? The consequences are unpredictable, but in any case it is not good news. Binational relations go beyond immigration controls and construction of physical barriers. Families, markets, culture, among other elements, will likely remain stronger forces that these obstacles, but they may be forced to function in the midst of enforcement tensions. This indicates the need to strengthen the defense of the rights of nationals abroad, a policy enforced by many countries in the region in the last decade, such as Mexico, El Salvador, and Ecuador, which have established or reinforced institutional structures for this purpose.

As a final point, intra-regional migration is the greatest opportunity for peaceful coexistence and comprehensive human development in the region. For this reason, it is important to encourage the implementation of the agreements established in regional integration mechanisms and the specific regional processes on migration, which are considered below.

## 5.8 Regional Responsibility Sharing to Respond to Challenges of the Latin American and Caribbean Migration

To respond to the challenges of migration presented above, the Latin American and the Caribbean countries have been defining and implementing mechanisms of responsibility sharing at global and regional levels of migration governance. The six main areas of responsibility sharing are the following:

### 1. Ratification of International Instruments to Protect the Rights of Migrants

Of the 48 states that have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly in 1990, 17 are from Latin America and the Caribbean,<sup>2</sup> which shows a formally important concern for the rights of migrants in the region.<sup>3</sup> Moreover, further reforms have been introduced to the legislation, institutions, and constitutions of many countries to ensure the rights of migrants — as well as some countries, such as Chile, Guatemala, Paraguay, and Peru — are in the process of drawing new laws on migration. On the other hand, compliance with these regulations regarding migration policies continues to pose major challenges to the states of the region.

### 2. Regional Processes on Migration

There are two highly consolidated consultation processes on migration in the region: On the one hand, the Regional Conference on Migration (RCM), an outcome of the Summit of Presidents

2 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (New York, 18 Dec. 1990), U.N. Doc. A/RES/45/158, <http://www.refworld.org/docid/3ae6b3980.html>.

3 Ratification by Latin American and Caribbean states occurred against the backdrop of violence, mixed flows, discrimination, and the existence of large, highly vulnerable populations.

(Tuxtla II) in 1996, which figures as a multilateral mechanism for the coordination and promotion of cooperation around migration policies in Central and North America (RCM 2011); and, on the other hand, the South American Conference on Migration (CSM, its Spanish acronym), which since 2009 has developed the South American Human Development Plan for Migration (PSDHM, its Spanish acronym) to strengthen the management of migration and the human rights of migrants in the region (CSM 2016). The CSM works on the subject of migration with a focus on human rights and advocates for the protection of migrants in situations of vulnerability, recognizing migrants as subjects of rights and their positive contribution to development (CSM 2016).

### **3. Inclusion of Migration Policies in the Regional Integration Systems**

Regional agreements, declarations, and integration systems are also relevant to international migration policies and programs. These include: the Southern Common Market's (MERCOSUR, its Spanish acronym) Specialized Forum on Migration and associated MERCOSUR measures to facilitate the mobility of persons from and to other member countries and other initiatives of a similar nature in the Caribbean Community (CARICOM), the Andean Community of Nations (CAN), as well as the dialogues on migration of the Community of Latin American and Caribbean States (CELAC, its Spanish acronym) and the Ibero-American Summit of Heads of State and Government to combat discrimination and xenophobia, and to ensure the rights of migrants (Saad et al. 2012, 53). The Special Declaration 9 on the Protection for Migrants of CELAC, for example, emphasizes the need to adopt a human rights approach in dealing with international migration and underlines the positive contribution of migrants to development in the reception countries.<sup>4</sup>

Several countries have already incorporated the principles of consistency and reciprocity — known in some respects as of “shared responsibility” — at all stages of the migration process. These are initiatives that require different levels of expertise, as they involve the normative aspects of policies and even reforms in the skills and in the bureaucratic culture of the administrative apparatus of the state. The complexity of the situation becomes more acute when the intra- and inter-regional scales are incorporated. In order to obtain concrete results in the governance of migration within the region and with other regions, a long-term process is involved, comprising the following elements (among others): 1) the multiple policy dimensions, from the struggle against discrimination to access to basic social services, education, and health, including access to sexual and reproductive health; and 2) the diversity of the target populations, which includes the migrant population in general, but also, and especially, the groups in a condition of greater vulnerability, such as unaccompanied minors, migrants in an irregular situation, women victims of violence, victims of human trafficking, repatriated migrants, and the forcibly displaced who are seeking refuge.

### **4. Participation in the Definition and Implementation of the Agenda 2030 and International Migration**

In the Agenda 2030, the member states have committed to implement a model of sustainable development, and in this regard the agenda incorporated international migration at the global

4 Special Declaration 9 on Protection for Migrants (Quito, 27 Jan. 2016), approved at the Fourth CELAC (Community of Latin American and Caribbean States) Summit, <http://en.granma.cu/mundo/2016-01-28/special-declaration-9-on-protection-for-migrants-in-latin-america-and-the-caribbean>.

level into several of the goals. To a great extent, this inclusion follows the general agreements emanating from two high-level dialogues on migration, and it provides a platform for the path to be followed after the High-Level Summit on Refugees and Migrants of September 2016. These processes — in which Latin American countries have actively participated — suggest the emergence of a global consensus on the importance of international migration in relation to development and human rights.

The inclusion of migration in the Declaration of the Members States of the United Nations on Agenda 2030 represents a big step forward in the process of mainstreaming international migration into the international political agenda in the field of development. This political act stresses the status of international migration as a global challenge that requires immediate attention and shared responsibility and commitment of all member states of the United Nations. Paragraph 29 of the Declaration, for example, stresses the shared responsibility of member states on respect for human rights in countries of origin, transit and destination; the recognition of the vulnerability of all migrants; the need for international cooperation to deal with the challenges of migration, such as forced displacement and humanitarian crises; strengthening the reception capacity of the destination communities; and the promotion of the right of migrants to return to their country of origin.<sup>5</sup>

Three goals (5.2, 8.7, and 16.2) set as a target for 2030 putting an end to human trafficking and the smuggling of migrants, while other goals seek to guarantee the labor rights of migrants in countries of destination (8.8), the reduction of transaction costs of remittances (10.c), the availability of scholarships to study abroad (4.b), retention of health workers in developing countries (3.c), and access to legal identity and birth registration (16.9). The realization of these goals in the region would solve significant challenges in the current Latin American and Caribbean migration agendas.

The most comprehensive goal regarding international migration is goal 10.7, which proposes to “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.”<sup>6</sup> This goal is very relevant to Latin American and Caribbean countries, although it is evidently ambiguous and generic, and refers to the need to hold a discussion that is regional in scope. The adoption of this goal, however, provides an important opportunity to move toward global policies on international migration and the creation of a monitoring framework for migration governance.

## **5. The Montevideo Consensus and Regional Migration**

The 2013 Montevideo Consensus on Population and Development, adopted in the first meeting of the Regional Conference on Population and Development of Latin America and the Caribbean which took place in Montevideo, Uruguay, on August 12–15, 2013, is the main regional and

5 Transforming Our World: The 2030 Agenda for Sustainable Development (New York, 25 Sept. 2015), UNGA Resolution 70/1, U.N. Doc. A/RES/70/1, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).

6 Id., 24.

intergovernmental instrument on population and development.<sup>7</sup> The Montevideo Consensus seeks to reaffirm, extend, and complement the Cairo Plan of Action, adopted in 1994 and extended indefinitely by the United Nations in 2010.<sup>8</sup> To this end, the consensus established Priority Measures to be complied with by the Latin American and Caribbean countries divided into 10 chapters, each devoted to specific concerns regarding population and development. The priority measures laid down in the Consensus are not organized hierarchically or prioritized, thus stressing the need to address them in their entirety. The chapters in which the measures are grouped focus on the full integration of the population, the rights of children and adolescents, aging, universal access to sexual and reproductive health, gender equality, international migration, territorial inequality, indigenous peoples, and people of African descent.

With regard to international migration, the Consensus emphasizes, in its General Principles, that respect for the human rights of migrants is a central priority of migration governance in the region, an obligation that must be shared by the international community.

In the Montevideo Consensus, the Latin American and Caribbean countries express their “concern at the evident and systematic human rights violations suffered by migrants as a result of racism, xenophobia and homophobia, as well as the lack of guarantee of due process and specific problems that affect different groups, especially women, girls, boys and adolescents, in terms of discrimination, abuse, trafficking in persons, exploitation and violence.”<sup>9</sup> This concern indicates how the region as a whole links the theme of international migration to the need to protect the human rights of migrants.

### **6. Global Conference on Migration and Global Compact on Migration**

Both the Agenda 2030 and the Montevideo Consensus may be used, at least, as resources for the negotiation of a Global Compact for Safe, Orderly, and Regular Migration, which should be discussed and defined in the 2018 Global Conference on Migration, as expressed in the New York Declaration for Refugees and Migrants, adopted during the first High-level Summit of the General Assembly Addressing Large Movements of Refugees and Migrants held on September 19, 2016. The member states of the United Nations committed to begin negotiations in 2017, and adopt the Global Compact in the 2018 conference. Its purpose would be to contribute toward the consolidation of global governance and international coordination in the field of migration and set a series of principles and commitments.<sup>10</sup> The Latin American and the Caribbean countries are organizing different discussions and gatherings in preparation of the negotiations of the conference through the Organization of American States (OAS), the Economic Commission for Latin America and the Caribbean (ECLAC) and the International Organization for Migration (IOM), considering also the participation of civil society organizations in these discussions.

7 Montevideo Consensus on Population and Development (Montevideo, 12-15 Aug. 2013), LC/L.3697, First Session of the Regional Conference on Population and Development in Latin America and the Caribbean, UN Economic Commission for Latin America and the Caribbean (CEPAL, Comisión Económica para América Latina y el Caribe), <http://www.cepal.org/es/publicaciones/21835-consenso-montevideo-poblacion-desarrollo>.

8 Id.

9 Id., 15.

10 UN Declaration for Refugees and Migrants (New York, 13 Sept. 2016), U.N. Doc. A/71/L.1, 26.

## 5.9 Conclusion

Migration governance in Latin America and the Caribbean will require a multitude of tools, including local, national, intraregional, and international processes, with the goal of creating sustainable responsibility-sharing models. Nations in the region must also create legal mechanisms for labor migration flows, so that migrants can move more freely and legally, and they must honor the right to seek asylum for those fleeing violence and persecution. Without government and legal reforms, the region will continue to experience large irregular migration patterns, which will undermine the need for order, security, and safety, and fail to promote the rights and aspirations of migrants.

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## 6 Knocking on the Door: Vulnerable Populations at the US-Mexico Border

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### 6.1 Introduction

With 65 million forcibly displaced persons in the world and more than 21 million refugees, large movements of refugees and migrants are prevalent throughout the world. North America is no exception. The US border with Mexico has seen record numbers of foreign nationals without documentation seeking entry into the United States over the past year. Due to applicable US laws, some groups have been able to gain access to the United States, while others have been summarily removed to their home country or denied entry altogether.

The group that has received the most attention is Central Americans fleeing violence in the Northern Triangle of the region — Guatemalans, Salvadorans, and Hondurans. Since 2014, more than 350,000 unaccompanied alien children and family units, respectively, have entered the United States seeking protection and reunification with family members. A second group, Cubans, have also arrived in record numbers, with over 150,000 having crossed into the United States since early 2015. A third group, Haitians, have also presented themselves at the US southern border in large numbers, fleeing poverty-stricken areas of their home island devastated by natural disasters. Lastly, migrants from other parts of the world — Africa, the Middle East, and Southeast Asia — are arriving in larger numbers as well.

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*In the case of the Northern Triangle nations, endemic violence caused by organized criminal groups, such as gangs and drug cartels, has precipitated the movement.*

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The US government has deployed a variety of enforcement tactics to deter the migrants, but to no avail. What is unique about the situation is that these groups are not attempting to cross the border illegally, as popular perception may have it, but are turning themselves into enforcement authorities with the hope of receiving protection, not deportation. All are fleeing situations in their home countries which are intolerable and are a threat to their well-being.

This paper analyzes these large movements and how the United States, Mexico, and other nations in the region have responded to them. By and large, the response has been characterized by deterrence tactics — the use of interdiction, detention, and deportation, among other schemes — to send a message that these migrants, many of whom qualify for refugee status, should remain home. Attempts to address the root causes of the movements, although helpful, have remained spotty and insufficient to the need.

In the case of the Northern Triangle nations, endemic violence caused by organized criminal groups, such as gangs and drug cartels, has precipitated the movement. With regard to Cuba, a communist dictatorship has driven many from the island, but the draw of special treatment

under US law — and the prospect of such treatment ending — has increased the numbers. For Haiti, natural disasters combined with endemic poverty have led many to take dangerous routes to reach the United States, usually by sea but now by land.

The paper will offer humane solutions to these movements which could replace deterrence strategies with refugee protection initiatives and which include a responsibility sharing approach.

## 6.2 The Role of the Scalabrini International Migration Network (SIMN) in the Region

The Scalabrinian International Migration Network (SIMN) is a network of over 270 facilities —shelters, schools, orphanages, and community centers — and eight educational institutes worldwide operated by the Congregation of the Missionaries of St. Charles, Scalabrinians, a Catholic religious order consisting of over 700 priests and religious and thousands of lay people globally. The congregation also operates in the United States, offering social and legal services to immigrants in Florida, Maryland, New York, Massachusetts, and Illinois.

The purpose of the network is to provide protection and support to migrants who have left their home countries because of violence, poverty, or other forms of forced migration, including refugees, victims of human trafficking, and asylum seekers.

SIMN operates migrant shelters in Tapachula, Nuevo Laredo, and Tijuana, Mexico; Tecun Uman and Guatemala City, Guatemala; and San Salvador, El Salvador. Since the spring of 2014, SIMN has served over 100,000 migrants in these shelters, mostly unaccompanied minors and young mothers with children fleeing violence in the Northern Triangle countries of Central America — Guatemala, Honduras, and El Salvador. The shelters also have hosted migrants from other nations, including Cuba, Haiti, and parts of Africa.

From SIMN's experience, it is clear that these persons are fleeing threats and violence in their communities, towns, and cities. In some cases they are attempting to reach family members and safety in the United States, while in others they are merely looking for a safe haven in order to protect themselves and their families. To be sure, there are mixed incentives for those we serve in our shelters — some seeking work, some seeking family, some seeking security, and some seeking a better future — but the common theme of their stories is the breakdown of the rule of law and the lack of opportunities in their home countries.

Moreover, these persons are particularly vulnerable, as they are subject to abuse by gang members, drug cartels, and human smugglers. From the stories we hear in our shelters and other facilities, they have experienced assaults, robberies, and sexual violence, not only from criminal elements but, in some cases, law enforcement. Scalabrini shelters provide them some protection for a while, but inevitably they are again exposed to these dangers, often with disastrous and inhumane results.

## 6.3 The Forced Migration of Central Americans

The countries of Honduras, El Salvador, and Guatemala — collectively known as the Northern Triangle of that region — are among the most violent countries in the world. In 2013, Honduras had the world's highest per capita rate at 90.4 homicides per 100,000 people, with El Salvador ranked fourth at 41.2 and Guatemala fifth at 39.9 (Restrepo and Mathema 2016, 2).

Since that time, El Salvador's per capita death rate has increased significantly due to the end of a "truce" between the government and gangs, and had increased to 92 per 100,000 in 2015. To compare, neighboring countries have much lower homicide rates, with Nicaragua, one of the poorest countries in the region, nesting at 11.3 homicides per 100,000 and Costa Rica standing at 8.7 (Restrepo and Mathema 2016, 3).

The three countries also rank in the top four worldwide in femicide rates. Women from the region have testified that they are subject to rape, assault, extortion, and threats by gang members and drug cartels. Kidnapping rates in El Salvador have jumped sevenfold over the past five years (Restrepo and Mathema, 2016, 3).

Children are particularly vulnerable in these countries. An estimated 6.5 million persons between the ages of 15 and 24 in Northern Triangle states live in communities controlled by gangs.<sup>1</sup> Gang members have infiltrated schools and often make the daily passage to and from school a harrowing experience for children and adolescents. Many children live in territories controlled by one gang but attend a school in an area controlled by another, leaving them suspect and at the mercy of both gangs.

As one person put it, "if you're young and poor, your lives are at risk every day." Children without parents at home are at particular risk. In one Catholic parish in San Salvador, more than one-half of the children have parents living abroad (Appleby, Chiarello, and Kerwin 2016, 6).

As a result, many parents keep their children out of school and locked in their homes while they work. Other families move frequently in order to try to avoid violence and try to find safe schools. Although this may be the best option available, it interrupts children's education. Not surprisingly, the school attrition rate is high, with 130,000 children in El Salvador not attending school on a regular basis. Civil society groups report that 300 teachers whose lives have been threatened in El Salvadoran schools have asked for transfers.<sup>2</sup> Exacerbating matters, gangs have also taken over the public recreational spaces previously available to children. As a result, as one activist put it, children and adolescents "feel they don't have a future" in their nations (Appleby, Chiarello, and Kerwin 2016, 6).

The lack of security in these countries is compounded by the depth of poverty in them, with more than 40 percent of Salvadorans, 54.8 percent of Guatemalans, and 69.2 percent of Hondurans living in poverty. The region's economic problems are exacerbated by a lack of global competitiveness, with all three countries in debtor status and ranked low in the World Economic Forum's "Global Competitiveness Index" (Restrepo and Mathema, 2016, 5).

Finally, the justice system in these countries is ineffective in punishing perpetrators. From 2011 to 2013, 48,497 people were murdered in the Northern Triangle countries, with only 2,295 cases receiving convictions, an impunity rate of 95 percent (Chavez and Avalos 2014).

The combination of violence, poverty, and lack of opportunity, and impunity in these countries has driven children and families to surrounding countries and to Mexico and the United States. They are literally fleeing for their lives. From 2008 to 2014, the United Nations (UN) recorded a 1,179 percent increase in asylum claims from nationals of the Northern Triangle in Mexico, Panama, Nicaragua, Costa Rica, and Belize.<sup>3</sup>

1 Roundtable discussion with Salvadoran NGOs, August 17, 2016.

2 Roundtable discussion with Salvadoran NGOs, August 17, 2016.

3 UNCHR press release, <http://www.unhcr.org/news/latest/2016/4/5703ab396/unhcr-calls-urgent-action-central-america-asylum-claims-soar.html>

The primary destination for children and families, however, has been the United States. Between March 2014 and August 2016, more than 160,000 unaccompanied immigrant children and 160,000 members of family units arrived at the US border in search of safe haven. The highest aggregate numbers were seen in 2014, with about 69,000 of each group having arrived by the end of the fiscal year on October 1, 2014. In 2016, however, the number of persons in family units exceeded the number in 2014 and the number of unaccompanied children increased by one-third over 2015.<sup>4</sup>

## 6.4 Dangers on the Journey North

Besides the danger Hondurans, Salvadorans, and Guatemalans face in their own countries, they also confront multiple dangers in their attempts to make it to safety in another country. They often are subject to kidnapping, sexual violence, extortion, and murder.

First, gangs are increasingly sophisticated in their ability to monitor the migration of certain individuals and families. Not only are gangs present along the journey, but they share photographs and information electronically about persons fleeing them. They are also adept at social media. Thus, persons who leave or attempt to flee gangs are often in peril throughout their journeys north. For example, in one instance gang members made migrants sitting outside a migrant shelter strip to their underclothes so that they could be checked for tattoos that would reveal any gang affiliations.

The Scalabrini shelters also have reported that gang members often try to infiltrate migrant shelters and monitor the migrants inside them. If gang members are identified, they are asked to leave the shelters and welcoming centers. The standard migrant orientation in one shelter includes warnings related to the dangers of migration, including ways to identify gangs and avoid victimization (Appleby, Chiarello, and Kerwin 2016, 5).

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First, gangs are increasingly sophisticated in their ability to monitor the migration of certain individuals and families.

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There are an increasing number of reports of persons being abused by traffickers, drug cartel members, and even police, especially in southern Mexico. One shelter in Guatemala had 70 documented cases of abuse of migrants in 2016 over a one-year period, ranging from extortion to kidnapping, which are the subject of formal complaints (*denuncias*) (Appleby, Chiarello, and Kerwin 2016, 5).

Women and children are particularly vulnerable along the journey, subject to kidnapping, sexual assault, and other forms of violence from human traffickers, unscrupulous smugglers, and corrupt government officials (Estudio Exploratorio 2015). Some are never heard from again. Nevertheless, parents continue to migrate with their children in high numbers, despite efforts by the United States and Mexico to stop them.

Second, once apprehended by authorities, migrants are detained in deplorable conditions, where they have little chance of receiving asylum. Of the 30,000 persons held in one Mexican detention center in Tapachula during 2016, only 217 had applied for asylum in Mexico over a six-month

4 US Border Patrol Southwest Family Unit Subject and Unaccompanied Alienc Children Apprehensions, FY 2016, <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>

period.<sup>5</sup> Some do not pursue asylum because they want to claim it in the United States or do not believe they will be safe in Mexico, but others are reportedly discouraged from applying by immigration officials.

The Comisión Mexicana de Ayuda a Refugiados (COMAR), Mexico's refugee assistance agency, and the United Nations High Commissioner for Refugees (UNHCR) provide briefings on asylum in the detention centers, but are not present on a full-time basis. While the asylum approval rate by COMAR has improved, from 10 percent a year ago to about 55 percent now, the agency has limited capacity to be present in the detention centers or to review large numbers of cases. Such wait times discourages applications. In addition, asylum seekers must remain in detention for two to three months, if not longer, for their claims to be adjudicated, another disincentive to seeking protection (Appleby, Kerwin, and Chiarello 2016, 7).

In addition, US-supported interdiction programs in Mexico do not include sufficient refugee screening safeguards. While detention officials are required to transfer persons who express a fear or request refugee status to COMAR, prison officials discourage detainees from requesting protection. Some migrants do not want to seek refuge in Mexico, given the strong presence in Mexico of the transnational gangs they have fled. In the United States, enforcement programs prevent de facto refugees from pursuing asylum claims and lead others to abandon their claims.

Finally, NGOs in the region monitor persons who are returned to El Salvador, stating that some that are returned are harmed or even killed.<sup>6</sup> Others try the journey north again, or, if unable to leave their country, relocate to other parts of the country, staying in hiding with friends or family. Local police cannot protect them. Deportees who have exhausted their number of paid trips north and who cannot rely on family or friends in other parts of the country to shelter and support them are particularly at risk and have no good options.

## 6.5 The US Response to the Central American Migration Flow

The debate in the United States about how to handle the flow of unaccompanied children and families reaching the US border has revolved around whether these vulnerable groups were seeking protection from persecution or simply hoping to rejoin family members or find a better life. The answer to the question is “all of the above,” although the evidence shows that violence in these countries is “the straw that stirs the drink” (MRS/USCCB 2013, 1-2).

The evidence bears this out. The Center for Migration Studies of New York (CMS) found that the US undocumented population from Central America increased by 5 percent between 2010 and 2014, but decreased from Mexico by 9 percent (Warren 2016, 8,10). The US undocumented population from Central American nations other than the Northern Triangle states fell even more precipitously, by 17 percent for Nicaraguan nationals, for example, and 22 percent for South American nationals. Such a disparity suggests that irregular migration from the Northern Triangle is driven by more than just economic or family reunification motivations, but also by endemic violence.

Additionally, a number of evidence-based reports from the region have found that 50-60 percent of children and families fleeing Central America have valid asylum claims. UNCHR produced two

5 Fact sheet, Tapachula Detention Center, August 2016.

6 Roundtable with Salvadoran NGOs, August 17, 2016. Participants indicated the presence of documented cases of children being killed upon return.

relevant reports, *Children on the Run* and *Women on the Run*. The first report found that six out of 10 had credible fear claims, while the report on women found that nearly seven out of 10 had been attacked and did not feel that local police could protect them (UNHCR 2014, 2; UNHCR 2015, 1).

Children from non-contiguous countries who claim asylum are treated differently than families, who may be subject to the expedited removal process and required to meet a credible fear standard. However, statistics show that families from the Northern Triangle are able to express credible fear at a high rate (Wolgin 2016, 10-11).

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In response to this flow, the United States has prioritized border enforcement, detention, and interdiction by Mexico of minors and families seeking refuge in the United States.

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At the same time, protection in the region has been virtually non-existent, while deportations have skyrocketed. According to a March 2016 Human Rights Watch report, Mexico increased its deportations of children nearly 270 percent in 2015, with only 56 children receiving refugee status (Bochenek 2016).

In response to this flow, the United States has prioritized border enforcement, detention, and interdiction by Mexico of minors and families seeking refuge in the United States. In FY 2015, the numbers arriving at the US border fell 45 percent compared to FY 2014, while deportations of Central Americans by the Mexican government increased 50 percent, reflecting US outsourcing and externalization of enforcement policies. In 2015, the Mexican government returned close to 200,000 Central Americans to the Northern Triangle countries of Guatemala, El Salvador, and Honduras, a jump of 70 percent from 2015.<sup>7</sup>

This deterrence strategy also featured the re-introduction of family detention, with a massive new facility built in Dilley, Texas, to hold families and one in Karnes, Texas as well. Refugee and children rights advocates have opposed the use of detention for these populations and numerous reports have documented ill-treatment and coercion of migrants in the detention centers. Both Karnes and Dilley detention centers are operated by for-profit companies, exacerbating the problem of public accountability for their operations. In early January 2016, the Obama administration launched a series of enforcement actions (characterized as “raids”) focused on family units, with a resulting 121 family members incarcerated, with many eventually deported. The enforcement actions were intended as a further signal to families not to travel north to the United States. The United States also has begun to deport children who have “aged out,” or turned 18, even prior to the end of their asylum cases (AIC 2016).

Yet despite these enforcement efforts, in 2016 the number of unaccompanied children and family units arrested at the US-Mexico border exceeded 2015 numbers and were comparable to the record numbers of 2014. Family units arriving at the Mexico-US border have outpaced the number of unaccompanied children by 25 percent. At the end of October 2016, the number of arriving family unit subjects (77,345) was above the total number for FY 2014 (68,445), while the number of unaccompanied children (60,323) was about 12 percent below the FY 2014 figure (69,123).<sup>8</sup>

Thus, while the US deterrence strategy may have succeeded initially in reducing arrivals at the

7 <http://www.latimes.com/world/mexico-americas/la-fg-mexico-migrants-20150905-story.html>

8 US Border Patrol Southwest Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions, FY 2016, Ibid.



Mexico-US border, it has failed to stem the flow of refugees and migrants from Central America. Moreover, deterrence and enforcement strategies have not been accompanied by rigorous refugee screening and protection systems.

The United States is not the only country to launch a deterrence program against a large movement of migrants and refugees. Both Australia and the European Union have pursued similar strategies, with mixed results. Australia, the first country to keep refugees away from their shores in this fashion, has pursued interdiction and “off shore” processing, keeping refugees fleeing Asia and the Middle East in dilapidated detention centers on Manus and Nauru islands. The European Union struck a deal with Turkey to send back Syrian refugees, but the agreement has collapsed and Syrians continue to attempt to reach Europe. Greece and other nations have either used detention as a deterrent or closed their borders. Each of these policies has led to human suffering, even deaths, and has not prevented refugees from attempting to make it to safety (Frelick, Kysel, and Podkul 2016, 10-13).

### *6.5.1 Attempts to Provide Protection*

The United States has launched some protection programs to help children and families fleeing gang-related violence to receive protection in their home countries, but these programs have floundered because of logistical, informational, and resource problems. The Central American Minor (CAM) program, which allows lawfully-present US residents to apply for refugee status or parole for their children living in El Salvador, Guatemala, and Honduras, has received over 11,000 applications since 2015, with only about 2000 children having arrived in the United States (Nakamura 2016). The Trump administration halted the program for four months on January 27, 2017, along with the entire US refugee resettlement program.

Due to processing delays of up to 10 months, parents in the United States have opted to pay to smuggle their children who are eligible for the programs to the United States, rather than expose them to continued danger in their home countries.<sup>9</sup> Another option may be to coordinate with civil society organizations to protect the children from gangs and smugglers during an expedited application and vetting process. Some non-governmental organizations (NGOs) have already protected children in these situations.

Another problem has been the small number of refugee admissions through the program compared to those who are paroled into the country.<sup>10</sup> In addition, positive refugee determinations have been changed to grants of humanitarian parole later in the process. The difference between parole and refugee status is significant, as refugees, unlike parolees, qualify for basic needs assistance and integration help once they arrive in the United States and can adjust to lawful permanent resident status after one year. While CAM represents a lifeline for some children, improvements should be made to ensure it reaches the maximum amount of beneficiaries in the region.<sup>11</sup>

The July 2016, announcement that the US government would establish an in-country resettlement program in the Northern Triangle countries plus an emergency resettlement program out of Costa Rica, will extend protection to additional refugees, but the implementation of these initiatives has been slow and the programs modest in relation to the need.

9 Roundtable discussion with Salvadoran NGOs, August 17, 2016.

10 USCIS reported in July 2016 that 48 children had been admitted as refugees and 96 as parolees.

11 See the Catholic Legal Immigration Network, Central American Minors Refugee/Parole Program, [www.cliniclegal.org/cam](http://www.cliniclegal.org/cam).

For example, the protection transfer arrangement (PTA) program, which allows for the transfer of emergency protection cases to Costa Rica, remains in the infancy stage, while the in-country refugee processing program has yet to begin. The US government should expedite their implementation, so they can be fully utilized during FY 2017. Moreover, the United States needs to show flexibility in the types of cases it would consider, possibly using the political opinion and social group categories as grounds for refugee status. Along with CAM, this program was halted by the Trump administration on January 27, 2017.

Finally, US foreign assistance is not reaching governments or local NGOs to help address refugee-producing conditions, perhaps due to conditions placed on the funding by Congress.<sup>12</sup> Instead, all three Northern Triangle countries recently announced a border initiative to interdict persons attempting to cross borders at non-traditional border crossing sites, in the name of controlling gang movement.

In summary, the US response to the Central American migration flow has been heavy on enforcement and interdiction and light on refugee protections. As a new administration comes in, a new paradigm is needed to address this flow, with an emphasis on refugee protection.

### *6.5.2 Policy Recommendations for Central Americans*

It is clear that the deterrence strategy employed by the Obama administration has failed and that a new approach is needed. Ultimately, these nations must resolve their internal problems — violence, poverty, corruption, and judicial dysfunction — in order to provide their citizenry a future and an incentive to remain home. In the meantime, policies focusing on refugee protection, ideally from a responsibility-sharing lens, must be implemented, as follows:

**The US and Mexican governments should ensure due process for vulnerable children and families fleeing violence in Central America.** Although the US and Mexican governments can enforce their laws, deportation of vulnerable families and children should be suspended because of 1) the lack of legal representation for these children and families; 2) their inability to access the court system in a timely manner; and 3) their vulnerabilities if returned to their home countries.

Unaccompanied minors should receive assistance in navigating the complex immigration court system, given their age and vulnerability. According to Kids in Need of Defense (KIND), children with legal representation have a three times greater chance in obtaining immigration relief than those who do not. Also, KIND reports that the immigration court system, which is severely backlogged, works more efficiently and effectively when children have legal representation (Podkul and McKenna 2016, 7).

Moreover, country conditions in the Northern Triangle, with endemic gang violence, should give the US government pause to remove these children and families. As potential refugees who are at-risk, they should be a low enforcement priority.

**The US government should designate and re-designate Temporary Protected Status (TPS) for El Salvador, Guatemala, and Honduras.** Because of the violence in these countries — Honduras, El Salvador, and Guatemala rank among nations with the highest murder rates — a designation of TPS for Guatemala and a re-designation for Honduras and El Salvador would ensure that this population is protected until the conditions in their countries improve.

<sup>12</sup> The FY 2016 appropriations bill included the attainment of security goals as a condition for assistance to Central American countries in the Northern Triangle, including maintaining their own borders.

**The US government should end family detention and use alternative forms of detention, particularly community-based service alternatives operated by qualified NGOs.** Instead of spending tens of millions of dollars on the detention of families, the Trump administration should create a nationwide program which places families in the community, assisted by social service providers experienced in child and family welfare. Such programs are cost-efficient and have been proven to ensure that participants appear at their asylum hearings. They also ensure that these families receive housing, access to legal representation, and other necessities.

**The US government and other nations in the region should expeditiously expand refugee resettlement in the region, work with local partners to identify persons at risk, and use the best interests of the child standard for adjudicating the cases of unaccompanied minors.** The expansion of refugee resettlement in the Central American region, as an alternative solution to migration for families and unaccompanied minors seeking protection, is essential. This responsibility should be shared by the US, Mexican, and Central American governments (Frelick, Kysel and Podkul 2016, 8-10).

Such an expanded resettlement program would provide Scalabrini and other service providers with a place to refer unaccompanied minors and families who they encounter in their shelters and other facilities. Providing them with an alternative to this dangerous journey would strengthen the ability to care for them and safeguard their well-being.

UNHCR and the US, Mexican, and Central American governments should receive referrals from our shelters in the new expanded refugee resettlement program. NGOs, including SIMN, should be allowed to work collaboratively with these governments to identify refugees and to work as advocates on their behalf.

UNHCR and states should also employ a best-interest-of-the-child standard to unaccompanied minors considered for resettlement in the program. This standard would ensure that children are placed with family and in a secure and healthy environment. Child welfare experts should be utilized in this process (MRS/USCCB 2013, 7).

The CAM program, which helps minors reunite with family members in the United States, should be continued, not halted. The CAM program can reach another element of the population who may not be able to leave their countries and who may be able to receive humanitarian parole. Improvements in the program are needed, including more wide-ranging publicity about the program, safe and secure areas for minors to relocate during the interview process, and an expansion of eligibility to other family members in the United States, such as uncles, siblings, and other family members who are thoroughly vetted.

**With help from the United States, Mexico should expand its asylum protection system and resettlement of unaccompanied children and families should be started out of Mexico.** While Mexico is doing the “dirty work” of the United States through interdiction and deportation, it is not sufficiently protecting children and families transiting through its territory. Children and families remain in danger in Mexico, subject to gangs, drug cartels, and human traffickers. While DHS has announced an initiative to help train immigration authorities in Mexico to better screen migrants for refugee status, more funding should be provided to COMAR to expand its capacity to adjudicate cases. Desarrollo Integral de La Familia (DIF), Mexico’s family welfare agency, should be funded to screen persons to whom children may be released pending the outcome of their refugee claim. Best interest determinations (BIDs) should be used in the adjudication of unaccompanied minors.

Finally, Mexico should not indefinitely detain persons because they are from certain regions or nations in the world (Appleby, Chiarello, and Kerwin 2016, 10).

**A comprehensive re-integration program should be implemented for those who are returned to their countries.** In the Northern Triangle region of Central America and parts of Mexico, more than one million persons have been displaced from their homes in the last year because of organized crime (Cardona-Fox 2016). They often have to flee their neighborhoods to another country or another part of the country, usually without their belongings or resources. Families and friends in different parts of the country cannot indefinitely sustain these migrants. Those who are returned cannot return to their communities, forcing them into hiding and to migrate again out of the region. A program must be devised to provide support to the internally displaced which have fled their homes because of violence. The plan should include the provision of basic needs, education, employment services, housing, and health care.

For those who are returned, a comprehensive reintegration program should be created in these countries to help ensure the safety of returnees. Such a model would include the placement of returnees in secure areas and the provision of follow-up services to help adults find employment and children to enroll in school. An effective program along these lines would help prevent those who are returned from seeking the assistance of smugglers to try to migrate again, at risk to their well-being and security.

**The US Congress should appropriate funds that address the causes of migration in the Northern Triangle nations.** Congress has appropriated \$750 million for the nations of the Northern Triangle, but the funding, passed in 2015, is insufficient to the need and is conditional on the three countries working to keep their citizens at home. The bulk of the funding should be applied to economic assistance in poor areas and the development of youth programs which give young people hope for their future. Programs which give youth training and skills to forge a future and job creation programs can help them remain in their home countries and make a living, giving them some hope.

## 6.6 Cubans Fleeing Their Homeland

Another large movement of persons arriving at the US-Mexico border in 2016 was Cubans fleeing oppression and the lack of opportunity in their homeland. Cubans have had special immigration status since 1966, when the Cuban Adjustment Act (CAA) was adopted, which gave them permanent residency one year after receiving asylum in the United States. Under the Clinton administration, a “wet foot, dry foot” policy was established which gave Cubans who reached US soil (dry feet) immediate parole, thus allowing them to bypass the asylum process and apply for permanent residence after one year. The US government also funded faith-based organizations to assist Cubans in their transition to life in the United States, by offering them assistance in finding housing and employment, and providing them with language training and cash assistance (CMS 2016).

Critics of the “wet foot, dry foot” policy, including the Cuban government, argued that it encouraged illegal and dangerous journeys by sea and, in some cases, by land. The Cuban government also felt the policy, coupled with the CAA, drew young Cubans away from their country, in hope of a better life in the United States (Gloioso 2015).

In recent years, the CAA has gained its share of US critics — most notably former presidential candidate and Senator Marco Rubio (R-FL) of Florida — who argued that Cubans were abusing the

law, establishing residency in the United States and flying back to Cuba on a regular basis, thus undermining the purpose of the law. Critics also stated that Cubans in the United States were propping up the Castro regime by remitting millions of dollars to the island each year (Mazzei 2017).

Others argued that the time had passed for Cubans to receive special treatment under the law and that they should be treated equally with other similarly situated populations in the region, like Haitians, Colombians, and Venezuelans. Immigration advocates, including the US Catholic bishops, took the opposite tack, saying that similarly-situated groups should receive the same benefits received by the Cubans. In other words, the floor should be raised for all asylum seekers (Tracy 2015).

On December 17, 2014, President Obama announced the normalization of relations with the Cuban government. Although his administration stated that it did not plan to end the “wet foot, dry foot” policy or attempt to repeal the CAA, many Cubans feared that it was a matter of time before the policy, at least, was repealed.

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In fact, unlike with the Central Americans, the US government facilitated, did not stem, the migration of Cubans north to the US border.

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As such, thousands of Cubans began leaving the island in an attempt to reach the United States in order to take advantage of the beneficial immigration treatment. Instead of risking their lives by sailing across the Caribbean to Florida, the majority found their way to South and Central America, mostly through Venezuela, and migrated north to the US border (Robles 2016a). Although not as high in number as the Central Americans, as many as 150,000 Cubans reached the US-Mexico border between 2014 and 2016. While Central Americans were halted and detained, Cubans were admitted and paroled into the United States as soon as they reached the border (Preston 2016).

In fact, unlike with the Central Americans, the US government *facilitated*, did not *stem*, the migration of Cubans north to the US border. At one point, thousands of Cubans were stranded in Costa Rica, as Nicaragua, an ally of Cuba, would not allow them to pass through their country. As a result, the US paid Costa Rica \$1 million to help shelter Cubans, as did Mexico. Eventually, Cubans stranded in Costa Rica were able to fly to northern Mexico and then cross into the United States (Robles 2016b).

On January 12, 2017, one week before the end of his term, President Obama confirmed the worst fears of Cuban refugees when he ended the “wet foot, dry foot” policy with a stroke of a pen. Now, Cubans are treated similarly to other asylum seekers and are subject to detention and removal if they fail to meet the “credible fear” standard, which applies to asylum seekers in the expedited removal process.

Now, over 1,000 Cubans who are stuck on the other side of the border in Mexico are facing the same situation as Haitians and other populations, unable to access protection in the United States (Robles 2017). Their only hope, albeit faint, is that the Trump administration reverses course and reinstates the “wet foot, dry foot” policy (Sanders 2016).

### 6.6.1 Policy Recommendations for Cubans

**As with all nationalities, the US government should not subject Cubans to expedited removal.** Cubans should receive an asylum hearing in order to assert their claims, especially as they are fleeing an oppressive government. They also should not be detained until their asylum case is heard.

**The US government should expand legal avenues for Cubans to rejoin family members or to come to the United States and work.** The US government should negotiate a migration agreement with Cuba that expands legal avenues and visas for family reunification or employment purposes.

**Should the US government reinstate the “wet foot, dry foot policy,” it should extend equal or similar treatment to other nationalities in the region.** If the Trump administration decides to reinstate the “wet foot, dry foot” policy for Cubans, it also should do so for Haitians and other vulnerable Caribbean populations.

**Cubans in the United States, as well as all Americans, should be allowed to travel to Cuba without restriction.** Restrictions on travel to Cuba were eased by the Obama administration and attempts to reinstate travel restrictions or bans should be resisted. Normalization should entail the full range of reciprocity between the nations.

## 6.7 Haitians Fleeing Poverty and Natural Disaster

On January 12, 2010, the country of Haiti was hit by a massive earthquake, killing as many as 316,000 Haitians and leaving 1.5 million displaced (CNN 2016). At the time, the US government allowed some women with children to migrate to the United States for care and treatment, but otherwise ensured that Haitians were not allowed to leave the country without documents, either by plane or boat. The US government halted deportations to Haiti for about a year, but resumed them for those who had committed serious crimes or were considered a security threat.

The US government also designated Haiti for Temporary Protected Status (TPS) on January 21, 2010, allowing Haitian nationals who had arrived in the United States by January 12, 2010, to remain in the United States and work for 18 months. Haiti has since been “re-designated” several times, which allows Haitians who entered after the original designation date to qualify (Kerwin 2014). However, TPS for Haitians is set to expire on July 22, 2017 (USCIS 2015).

After the earthquake, thousands of Haitians made it to Brazil, where many received humanitarian visas and were able to work, some to prepare for the World Cup and the Olympics. In the spring of 2016, however, Haitians began losing their jobs, sinking further into poverty, and started streaming north to the United States. They had to cross 10 international boundaries, using whatever means of transportation they could obtain, or relying on smugglers. Once in Mexico, they were able to take buses to the northern border. Many experienced robbery, beatings, and encounters with armed gangs, while some died from exposure or drowned in rivers (Semple 2016).

During FY 2016, at least 5,000 Haitians showed up at the San Ysidro border crossing linking Tijuana to San Diego, compared to 339 who arrived during FY 2015. During this time, the Scalabrini migrant shelter in Tijuana began housing as many as 80 Haitians per night, with at least 300 per night in need of some kind of shelter. The majority is men, but women and children, even newborns, are part of the migration flow (Murphy 2016).



Nearly all were allowed to enter because of a modified deportation policy that did not subject Haitians to expedited removal, although some were detained. Others were released into the community, as local NGOs, including Catholic Charities, assisted them with social support.

However, the Obama administration announced it would commence deportations of and restore expedited removal of all undocumented Haitians on September 22, 2016, due in part to the rise in the number of Haitians at the southern US border. Then US Department of Homeland Security (DHS) Secretary Jeh Johnson announced that conditions in Haiti had improved “sufficiently to permit the US government to remove Haitians on a more regular basis.”

On October 4, 2016, however, Hurricane Matthew hit the country, leaving 800,000 Haitians homeless. The US government again halted deportations to Haiti, but resumed them on November 23, 2016.<sup>13</sup>

Thereafter, US border officials began telling Haitians who presented themselves at the border that they would have to come back for an interview. They were given a number, an unusual approach to the surge at the border. Many are still waiting for their credible fear interviews, if they are to receive one at all. At the same time, Mexican authorities are unwilling to grant Haitians asylum, leaving them in limbo in Tijuana and other parts of the US-Mexico border.

At present, as many as 4,500 Haitians remain stranded on the Mexican side of the US border in Tijuana, waiting for a chance to seek asylum in the United States. Their fates are unclear, especially with a new administration in Washington, DC, which is hostile to immigrants (Semple 2017).

Other than populations in the region, nationalities from all over the world are making their way to the US border, including Pakistanis, Chinese, Indians, Congolese, Ghanaians, and Somalis (Murphy n.d.). In 2016, DHS detained 32,000 individuals from countries beyond Mexico, Central America, and Cuba, with 6,503 from Haiti, 4,665 from Brazil, 3,622 from India, 2,595 from China, and a surprising 2,569 from Romania (Jackson 2017). They have taken similar routes as the Cubans and Haitians, finding their way to South America and making their way north through Central America. Like the Haitians, many are stranded and in limbo on the Mexican side of the US border, unable to obtain asylum in either country.

They also are being interdicted along the way. In a visit to the Tapachula detention center, SIMN representatives found nationalities from Africa detained and a group of Pakistanis who had been detained for several weeks. The latter groups told the delegation that they were fleeing religious persecution in Pakistan, as some were Christians. However, they said they were being held longer than other groups. Indeed, reports at the time indicated that US government officials had asked the Mexican government to hold persons from the Middle East and suggested that background criminal checks were being run on them. At the time of the visit to the detention center, no DHS officials were present (Appleby, Chiarello, Kerwin 2016, 7).

### *67.1 Policy Recommendations for Haitians and Other Populations*

**The US government should suspend deportations to Haiti until such time as the nation is able to receive their nationals and guarantee their well-being.** Deportation of persons back to Haiti will place more stress on a financially-strapped government, which will be unable to protect or care for them.

13 Statement by DHS Secretary Jeh Johnson on November 23, 2016, available at <https://www.dhs.gov/news/2016/11/23/statement-secretary-johnson-resumption-removals-haiti>.

**Haiti should be re-designated for TPS, expanding those who qualify to Haitians who arrived post Hurricane Mitch.** With 800,000 Haitians displaced from Hurricane Mitch, recovery will take some time, especially with the nation not fully recovered from the 2010 earthquake. Re-designating TPS for Haiti would ensure the ongoing flow of remittances to the stricken nation.<sup>14</sup>

**The United States should not be subject Haitians to expedited removal.** Haitians at the US-Mexico border should be given a chance to pursue their asylum cases through the immigration court system and not be subject to expedited removal. They should not be detained for an undue period.

**Asylum seekers from around the world should receive due process in considering their claims.** Like Haitians, asylum seekers from Africa, Asia, and the Near East should be able to assert their claims before a qualified authority. Those from certain nations should not be discriminated against in this process or detained longer than necessary.

## 6.8 Executive Orders Issued by the Trump Administration and Their Impact on Immigrant and Refugee Populations on the Border

Within days of his inauguration, President Trump issued three executive orders<sup>15</sup> which would adversely impact refugee and immigrant populations presenting themselves on the US-Mexico border. The orders have generated significant controversy in the United States and worldwide.

The first order, entitled, “Border Security and Immigration Enforcement Improvements,” takes several steps to make it more difficult for asylum seekers to receive due process, including the expanded use of expedited removal and mandatory detention, the construction of a border wall, and the movement of asylum officers and immigration judges to detention centers at the border to expedite asylum cases. Taken together, these steps would severely limit the ability of asylum seekers, including unaccompanied minors and families from Central America, to access legal representation and adequately prepare for their hearings (Costa 2017).

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The [executive] orders have generated significant controversy in the United States and worldwide.

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The border security executive order also allows for asylum seekers to be returned to the territory “from which they came,” pending formal removal proceedings, which means that families could be “pushed back” into Mexico for some time, and, pending an agreement with Mexico, their cases could be adjudicated on Mexican soil.

The construction of a border wall, much publicized during the presidential campaign, would not halt the flow of refugees and migrants appearing at the US-Mexico border, but would only drive the flow into more remote and dangerous regions. It also would strengthen, not weaken, smuggling networks and would drive up the prices they charge refugees and migrants to arrive at and cross the border (Barry 2016).

The second executive order, entitled, “Enhancing Public Safety in the Interior of the United States,” contains several provisions which could impact vulnerable populations on the border

14 DHS recently announced a six-month extension of TPS for Haiti, which will now extend to January 23, 2018.

15 The White House, “Presidential Actions,” <https://www.whitehouse.gov/briefing-room/presidential-actions>.

who are able to lawfully enter the United States. To date, tens of thousands of Central American unaccompanied children and family units have been released into the United States, many of them awaiting their court hearings. The executive order greatly expands the definition of “criminal alien” and who may be subject to removal for a variety of reasons, including the judgment by an immigration officer that they are a “threat” to public safety or if they have committed an act that could constitute a chargeable offense. These criteria are subjective and could include almost any immigrant in the country, including children and families (Medina 2017).

Finally, the executive order on refugees, entitled “Protecting the Nation from Foreign Terrorist Entry into the United States,” would suspend the refugee resettlement program for 120 days. It also sought to halt travel from seven Muslim-majority countries from entering the country for 90 days, and reduced the number of refugees to be admitted to the United States in 2017 from 110,000 to 50,000.<sup>16</sup> The order would also suspend the CAM and PTA programs. As a result, thousands of children and families would remain in grave danger (Lakhani 2017).

### *6.8.1 Recommendations on the Executive Orders*

**Congress should block several provisions of the executive orders.** Absent withdrawal of the orders by the Trump administration or a court decision that overturns them, Congress should block several provisions in the executive orders impacting refugees and migrants. Some provisions, including the construction of a border wall, detention centers, and increased enforcement personnel, require congressional funding.

Congress should also pass legislation to strengthen the protection of children and families, such as mandating legal representation for them, requiring that they be released to family or to alternative-to-detention programs, and sharpening the definition of unaccompanied children. In addition, Congress should increase funding for immigration judges, in order for the immigration court system to operate more efficiently.

Finally, Congress should place pressure on the administration to restart admissions under the US refugee program and to honor a level of 110,000 admissions during FY 2017. Refugees are the most vetted entrants into the United States, having to undergo a lengthy security process (RCUSA 2017).

## **6.9 Conclusion**

As stated, large movements of refugees and migrants exist in all parts of the globe, including the Americas and, specifically, in North America. As conditions worsen in sending countries around the world, more nationalities will come knocking at the door of the United States in search of refuge or a better life.

The executive orders issued by the new administration indicate that the United States could be retreating from its global commitments at a time of increased global need. While some of the provisions of the orders require congressional approval and funding, they send a signal to the world that the United States could be turning its back on asylum seekers, at least for the foreseeable future.

<sup>16</sup> As of this writing, a federal court in Hawaii has temporarily halted a revised version of the executive order.

Interestingly, the Trump administration has decided to honor an Obama administration agreement with Australia to accept over 1,200 desperate refugees detained in dilapidated conditions on Manus Island (Papua New Guinea) and the Republic of Nauru, who were interdicted at sea by the Australian government. Many in the population come from nations in the Middle East, including nations whose nationals are barred from traveling to the United States under the executive order. In return, Australia has agreed to accept Central Americans from the Northern Triangle.

The agreement is telling because it demonstrates that deterrence policies deployed by the US and Australia have failed to prevent refugees from seeking protection in their countries. It also sets a dangerous precedent, because it allows both nations to abdicate their responsibilities to refugees in their area of the world (Siegel 2017).

Proposals are also being floated to reduce the US commitment to international assistance and international humanitarian organizations, including UN agencies. As such, it is unclear, at best, as to whether the new administration would facilitate, or even participate in, the UN processes negotiating the Global Compact on Responsibility Sharing for Refugees and the Global Compact on Safe, Orderly, and Regular Migration.

The future of responsibility sharing to protect large movements of refugees and migrants in North America, then, is murky at best. Thus, advocates and service providers, including the Scalabrini network, must remain vigilant in defending the rights of persons on the move and in encouraging nations to cooperate in protecting their rights. Otherwise, the record number of migrants and refugees in the world will increase and their situations worsen, leading to expanded instability across the globe.

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## 7

## Conclusion

The five papers in the 2017 *International Migration Policy Report* of the Scalabrini migration study centers demonstrate that the global community is at a crossroads with regard to the protection of large movements of refugees and migrants. Common to each analysis is the absence of adequate responsibility-sharing mechanisms to ensure that all nations contribute to the protection of persons on the move.

In Europe, nations continue to point the finger and not accept responsibility collectively, with front-line nations, such as Greece and Italy, bearing the brunt of protection responsibilities. In Africa, regional cooperation, while noble, is insufficient to the need, leading to protracted refugee situations with little options for improvement.

The Rohingya ethnic group of Myanmar is stateless, with few nations in the region willing to accept them permanently, as their villages are being burned and their population being killed by the Myanmar military. Latin America and the Caribbean are largely immigrant-producing countries, with the majority of their migrant populations attempting to reach the United States and Canada, but with many settling in nations within the region. In North America, the United States, the wealthiest nation on earth, is using deterrence tactics to prevent unaccompanied children and women and children in families from arriving at the US border.

The policy recommendations in these papers point to the need for a uniform global model for responsibility sharing in the context of large movements of persons. Such a model would apply to the entire international community and would help relieve the burden on front-line states, many of which do not have the capacity to deal with large populations.

As such, it is vital that the processes leading to a Global Compact on Responsibility Sharing for Refugees and the Global Compact on Safe, Orderly, and Regular Migration continue and lead to binding agreements by 2018. The Scalabrini migration study centers will continue to inform and participate in these processes and will raise concerns and solutions, based on its expertise and experience serving refugees and migrants around the world.

As Pope Francis has stated, the world must move beyond a “globalization of indifference” to migrants to international solidarity: “It is important that nations in the forefront of meeting this present emergency not be left alone, and it is also essential to initiate a frank and respectful dialogue among all the countries involved in the problem — countries of origin, transit, or reception — so that, with greater boldness and creativity, new and sustainable solutions can be sought.”<sup>1</sup>

1 Pope Francis in an address to the Vatican diplomatic corps on January 11, 2016.