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THE LEGAL FRAMEWORK FOR THE PROTECTION OF MIGRANTS IN INTERNATIONAL LAW

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ABSTRACT

Worldwide, people cross borders for a wide range of reasons: to escape violence and natural disasters, to work, to visit families, to seek education or Medicare, or to return home. It is said that states have complete authority to regulate the movement of persons across their borders – that anything less than complete authority would undermine their sovereignty and threaten their ability to define themselves as a nation. Against this claim, it is usually asserted that migrants have fundamental human rights that state regulations of migration cannot deny. By the provision of Article 2(7) of the United Nations Charter, all states are encouraged to manage their borders, control the flow of persons in and out of the state through their migration laws and policies. The aim of this work is to examine the sovereign rights of states to admit or exclude in light of the rights of migrants in international law. The doctrinal method of research has been adopted in this research. The paper further examined the rights of migrants, causes of migration and the challenges thereof. The paper recommends, among others, that by collaborating with other countries, states are able to strengthen their ability to control their borders effectively.

Keywords: State, Sovereignty, Migration, Migrants' Rights, International Law.

INTRODUCTION

Migration has been a constant and influential feature of human history, and remains a fundamental part of human nature. People move from one place to another for diverse reasons, which include poverty, unemployment, famine, political and religious crises, natural disasters and so on. Essentially, migration is the process of temporary or permanent relocation of a person from his or her place of traditional abode to another place, in search of better living conditions, family reunification, further studies or other reasons. It has supported the process of global economic growth, contributed to the evolution of states and societies and enriched many cultures and civilisations.[1] Migrants have often been amongst the most dynamic and entrepreneurial members of society, who are prepared to venture beyond the confines of their own community and country in order to create new opportunities for themselves and their children.[2] In the contemporary world, international migration continues to play an important role in national, regional and global affairs. International migration has

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1 National Migration Policy (2015) <https://publications.iom.int/system/files/pdf/national_migration_policy_2015.pdfaccessed> 12 July 2023.

2 Migration In An Interconnected World: New directions for action (Report of the Global Commission on International Migration, (2005). <https://www.iom.int/sites/g/files/tmzbdl486/files/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/GCIM_Report_Complete.pdf> accessed 21 March 2022.

risen to the top of the global policy agenda. As the scale, scope and complexity of the issue have grown, states and other stakeholders have become aware of the challenges and opportunities presented by international migration. In every part of the world, there is an understanding that the economic, social and cultural benefits of international migration are quite enormous, and that the negative consequences of cross-border movement could be surmounted.[3]

Over the last century, international migration has become increasingly more regulated as states developed better techniques of defending their territory against illegal aliens. The current balance seems to allow the admission of skilled migrants into the receiving states, and sometimes in furtherance of international migrations. Over time, states have increasingly enforced their state sovereignty over the admission of aliens. In this sense, it is little wonder that Kennedy[4] refers to sovereignty as "an archaic nemesis for international law"[5] States will argue that their wish to maintain sovereignty over migration issues is based on realism. This argument seems short-sighted, for it fails to acknowledge the interdependence of states and the need to formulate regimes that will deal with an international issue that will continue to affect both the sender and receiving countries. Therefore, until the time when nations are prepared to relent some of their sovereignty to further international cooperation in dealing with international migration, questions on how to deal with the brain drain, undocumented migrants, and the need for workers will continue to capture political rhetoric.[6] It is a known fact that states have complete authority to regulate the movement of persons across their borders – that anything less than complete authority would undermine their sovereignty and threaten their ability to define themselves as a nation.

Migrants are vulnerable to human rights violations because they are not citizens of receiving states and, due to their status, often live in precarious conditions. Women migrants have to deal with additional challenges as they face human rights violations based on their migrant status as well as based on their gender. Whether migrants enter a state "with authorisation or they are undocumented, migrants will generally find their rights diminished in comparison with the citizens of their country of residence."[7] While human rights are inalienable and should not be granted on the basis of citizenship, as part of the notion of state sovereignty, states possess extensive authority to protect their borders and determine their own laws, because admission and exclusion of non-nationals into a sovereign state territory is within its absolute domestic jurisdiction, which makes freedom of movement a restrictive right.[8]

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3 "Forced Migration and Separated Families" (2023)< https://developingworldpolitics.com/2023/03/23/open-access-book-forced-migration-and-separated-families-available/> Jo Joseph, The Effects of Migration on Socio Cultural Problems & Integration (2023) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4426308> accessed 20 February 2024.

4 Thomas Schindlmayr, Sovereignty, Legal Regimes, and International Migration: Notes and Commentary <https://library.fes.de/libalt/journals/swetsfulltext/17087754.pdf> accessed 27 February, 2024

5 Ibid

6 Ibid <https://www.un.org/en/chronicle/article/protection-migrants-rights-and-state-sovereignty> accessed 14 February 2024.

8 Laura Thompson, Protection of Migrants' Rights and State Sovereignty (2013) <https://www.un.org/en/chronicle/article/protection-migrants-rights-and-state-sovereignty> accessed 26 March 2023.

There is a fear that protecting human rights and placing the individual at the forefront of migration issues undermines state sovereignty or that putting migration governance firmly within the existing international legal framework may, in some way, be detrimental to state sovereignty. It is, however, important to underline that existing international laws like the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families[9], International Migration Law,[10] do not impose upon states how to govern their migration flows, nor do they dictate how to formulate migration policies.

MIGRANT DEFINED

Generally, 'migrant' is a term which applies to persons moving within or between countries to improve their economic and social conditions.[11] A migrant is a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons.[12]

The International Organisation for Migration (IOM) provides clarity in the definition, where a migrant is defined as:

> *'Any person who is moving or has moved away from his/her habitual place of residence, regardless of the person's legal status, whether the movement is voluntary or involuntary, what the causes for the movement are, or what the length of the stay is; this includes economic migrants as well as those who have been forcibly displaced (e.g., refugees and internally displaced persons).*[13]

This definition addresses internal—movement within a country, as opposed to external (international)—movement across borders; economic—for enhancement of quality of life (where the decision to migrate is taken freely by the individual concerned, for reasons of 'personal convenience' and without intervention of an external compelling factor), as opposed to forced—from violence, conflict and disasters to gain safety and protection; as well as regular, a legal authority to enter, compared to irregular where the presence does not fit within the country's legislation.[14] Outside of general definitions of migration and migrant, such as those found in dictionaries, there exist various specific definitions of key migration-related terms, including in legal, administrative, research and statistical spheres. There is no universally accepted definition of the term "migrant" at the international level. The term "migrant" refers to all cases where a person decides to migrate freely, without coercion, which is dictated by considerations of "personal well-being" and occurs without the

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9 United Nations, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers> accessed 27 February, 2024.

10 Marja Tiilikainen et al, Forced Migration and Separated Families: Everyday Insecurities and Transnational <https://publications.iom.int/system/files/pdf/iml_1_en.pdf> accessed 27 March, 2023.

11 Tamar Khokhobashvili, *What is Migrant*? <https://www.igi-global.com/dictionary/migration-policy-challenges-and-management/57024> accessed 20 February 2024.
Source Title: Handbook of Research on the Regulation of the Modern Global Migration and Economic Crisis p16

12 United Nations, Making migration work for all <https://www.iom.int/about-migration> accessed 27 March, 2023.

13 United Nations, Migrants Protect NOT Marginalize < https://www.un.org/en/fight-racism/vulnerable-groups/migrants> accessed 12 July, 2023

14 P Douglas, M Cetron, P Spiegel, Definitions Matter: Migrants, Immigrants, Asylum Seekers And Refugees <https://academic.oup.com/jtm/article/26/2/taz005/5315619> accessed 20 March 2023

intervention of an external coercive factor. Thus, the term is used to refer to persons and their family members who move to another country or region to improve both their material and social conditions and their personal and family prospects for the future. A migrant is a person who changes his or her place of usual residence across an international border, temporarily or permanently, and for a variety of reasons. The term refers to all those on the Balkan route travelling to Europe, including people who intend to seek asylum and may later gain refugee status. The term 'migrant' is used in a broad sense and involves groups of people, including refugees, asylum seekers, economic migrants, smuggling and human trafficking victims, minors, and undocumented people.[15] A migrant is also a person who moves from one place to another in order to find work or better living conditions.[16] This dictionary definition seems to provide the simplest explanation of what a migrant is.

According to the Nigerian National Migration Policy 2015, international migration involves the movement of persons across international borders, while internal migration is within the state.[17] There is no universally agreed-upon definition of migration or migrant. However, several definitions are widely accepted and have been developed in different settings. Migration touches all States and people in an era of transnationalism. Migration is intertwined with geopolitics, trade and cultural exchange and provides opportunities for States, businesses and communities to benefit enormously. Migration has helped improve people's lives in both origin and destination countries and has offered opportunities for millions of people worldwide to forge safe and meaningful lives abroad, as well as contributing enormously to those societies. At this critical time in history, with increasing global migration, the highest level of forced migration in seven decades, in the context of the escalating divisive and xenophobic political discourse, rather than pursuing the globalisation of indifference, as medical professionals, we need to advocate and promote evidence-based discussions on migrant health issues. Through clearly understanding the term migrant and the various typologies, we are more likely to shape well-constructed solutions to meet the health and well-being needs of migrant populations, taking into consideration the circumstances and conditions of their journey and the reasons for movement. Migration, or the movement of people, has been referred to as the third wave of globalisation,[18]following goods and capital. This phenomenon is growing in scope, complexity and impact.

Human migration across borders is now at an all-time high, accounting for more than 258 million people or 3.4% of the population,[19] a number that has doubled since 2001 and tripled since the 1970s. Migrants are a heterogeneous group with no international consensus.

Immigrant is the term used for a person after arriving in the destination country, whereas emigrant is one who migrates out of the country of origin. Migrant is a more neutral

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15 Goergiana Florentina Tataru, Migration – an Overview on Terminology, Causes and Effects (2020) <https://www.researchgate.net/publication/338590488_Migration__an_Overview_on_Terminology_Causes_and_Effects> accessed 16 April 2024.

16 Oxford Learner Dictionary, <https://www.oxfordlearnersdictionaries.com/definition/english/migrant_1> accessed 12 November 2024.

17 NIP Supra

18 Peter Scholten, Introduction to Migration Studies: An Interactive Guide to the Literatures on Migration and Diversity <https://link.springer.com/book/10.1007/978-3-030-92377-8> accessed 12 July 2023

19 Douglas Paul Definitions Matter: Migrants, Immigrants, Asylum Seekers and Refugees (2019) <https://just-tech.ssrc.org/citation/definitions-matter-migrants-immigrants-asylum-seekers-and-refugees/> accessed 12 November 2024.

term as it disregards the direction of movement and may include migration within or across borders.[20]

Although precise figures on irregular migration remain elusive, irregular migration, like legal migration, is on the rise. According to IOM, people who travel without proper travel documents account for one-third to one-half of new entrants into developed countries,[21] which is an increase of 20 per cent over the past 10 years.[22] The actual number of migrants in an irregular situation within countries, which also includes those who entered legally but whose legal stay has expired, is equally difficult to estimate. Estimates suggest that in the US, where the population totals approximately 341 million,[23] the total number of irregular migrants is as high as 12 million. The European Union, home to approximately 454 million people, is estimated to host 500,000 irregular migrants each year.[24]

STATE SOVEREIGNTY

Sovereignty is the bedrock of today's international migration system. While there are different definitions of sovereignty, sovereignty is generally understood as the authority of a state to govern itself. It recognises the autonomy of all states and the principle of non-intervention in the affairs of other states. Within this context, national security—whether defined as political, economic, social, or cultural —underlies the decisions of sovereign states with regard to border control. This is increasingly the case with regard to border control, which is seen as a quintessential exercise of sovereignty. State control over borders has several purposes, amongst which is the maintenance of internal security.[25]

The term "sovereignty" originates from Latin "supremus", meaning supreme and from the French word "Sovran", and has to do with the fact that it marks the subject's meaning as sovereign, supreme, respectively independent from others.[26] Sovereignty is the exclusive right to exercise supreme political authority (legislative, judicial, executive) over a geographical territory, over a group of people, or over themselves.[27] The doctrine of sovereignty developed as part of the transformation of the medieval European system into a modern state system; this process is the resultant effect of the Westphalian treaty of 1648. Internationally, sovereignty has served as a basis for mutual recognition, on the basis of legal equality of states, but also as a basis for diplomacy and international law.[28]

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20 UNITED NATIONS-WORLD MIGRATION REPORT 2020 <https://publications.iom.int/system/files/pdf/wmr_2020.pdf> accessed 20 March 2023

21 S. Grant, International migration and human rights <https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP7.pdf> accessed 12 November 2024.

22 Ibid

23 WorldoMetre, United States Population (2024) <https://www.worldometers.info/world-population/us-population/> accessed 20 February 2024.

24 UNPF, Meeting the Challenges of Migration ACTA UNIVERSITATIS DANUBIUS Vol. 14, no. 1/2018 <https://www.unfpa.org/sites/default/files/pub-pdf/migration_icpd.pdf >accessed 16 March 2024

25 Susan F. Martin, Elizabeth Ferris, Border Security, Migration Governance & Sovereignty (2017) <https://global.upenn.edu/perryworldhouse/blog/border-security-migration-governance-sovereignty> accessed 15 April 2024.

26 Fejzulla Berisha And Sadik Haxhiu, Elements of State Power and its Territorial Extension

27 Ramona Gabriela Tătar and Adela Moișı, The Concept Of Sovereignty Journal of Public Administration, Finance and Law https://www.jopafl.com/uploads/issue24/THE_CONCEPT_OF_SOVEREIGNTY.pdf

28 Ibid

RIGHTS OF MIGRANTS

The rights of migrants are implicitly or explicitly set by international migration law, including international human rights and other public law instruments.[29] Migrants are vulnerable to human rights violations because they are not citizens of receiving states and, due to their status, often live in precarious situations. Women migrants have to deal with additional challenges as they face human rights violations based on their migrant status as well as based on their gender. Whether migrants enter states "with authorisation or they are undocumented, migrants will generally find their rights diminished in comparison with the citizens of their country of residence." While human rights are inalienable and should not be granted on the basis of citizenship, as part of the notion of state sovereignty, states possess extensive authority to protect their borders and determine their own laws. Measuring the rights of migrants exclusively through a human rights-based approach—an approach that only considers international human rights instruments—does not encompass the full range of migrant rights set by other instruments. On the other hand, a rights-based approach acknowledges that the rights of migrants are granted not only by human rights law but also by treaties from other branches of international public law, including but not limited to Refugee law; Transnational criminal law, especially treaties relating to human trafficking and smuggling of migrants; Humanitarian law; Labour law; and Law of the Sea. Migrants are vulnerable to human rights violations because they are not citizens of receiving states and, due to their status, often live in precarious situations. Female migrants have to deal with additional challenges as they face human rights violations based on their migrant status as well as based on their gender.

Flowing from the above, migrants possess the following rights:

Right to life; liberty and security; Right not to be held in slavery or servitude; Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; Right not to be subjected to arbitrary arrest, detention or exile; the right to marry and to found a family; Right to work, free choice of employment and just and favourable conditions of work; Right to form and join trade unions and recognize the right to social security, including social insurance, an adequate standard of living, Right to the highest attainable standard of physical and mental health, Right to education; Right to take part in cultural life and benefit from scientific progress.[30]

LAWS REGULATING MIGRATION

National laws and procedures

For migrants, national laws and procedures remain the watchword or barrier to the exercise of their rights. These laws vary significantly from country to country based on their migration

[29] United Nations,, International standards governing migration policy <https://www.ohchr.org/en/migration/international-standards-governing-migration-policy>accessed 11 July, 2023

[30] United Nations, Universal Declaration of Human Rightshttps://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf

policy. In Nigeria, however, the law regulating migration is the Immigration Act 2015[31] and Immigration Regulation 2017

The International Covenant on Civil and Political Rights (ICCPR)
It defines the basic rights of all persons as: the right to life, liberty and security; the right not to be held in slavery or servitude; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; the right not to be subjected to arbitrary arrest, detention or exile; the right to marry and to found a family. Article 2 specifies that such rights are provided without distinction of any kind, such as race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status.[32]

The International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees the right to work, free choice of employment and just and favourable conditions of work. State parties undertake to ensure the right to form and join trade unions and recognize the right to social security, including social insurance, an adequate standard of living, the highest attainable standard of physical and mental health, education (compulsory and free at the primary level), and to take part in cultural life and benefit from scientific progress. ICESCR is aspirational in many respects, with State parties committing to "take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures". In a clause specifically referring to non-nationals, the ICESCR recognises that "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals"[33]

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) includes a number of provisions applicable to migrant women, including but not limited to the elimination of sex role stereotyping (Article 5), suppression of traffic in women and exploitation of prostitutes (Article 6), and an end of discrimination in the field of employment and citizenship (Articles 3, 9 and 11). Article 14 requires State Parties to act to eliminate gender discrimination in rural areas. Protection from such discrimination is important in helping to ensure that rural women need not migrate in search of their rights and employment opportunities. The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) is a further instrument for protecting the rights of migrants, since many migrants experience racial discrimination.[34]

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31 ACT NO 8 2015

32 International Convention on Civil and Political Rights', 1966 Adopted by the General Assembly of the United Nations on 19 December 1966 <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> accessed 4 January, 2023Susan Martin, The legal and normative framework of international migration

33 United Nations, International Covenant on Economic, Social and Cultural Rights

34 United Nations, United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 1979) <https://www.unwomen.org/en/digital-library/publications/2016/12/cedaw-for-youth> accessed 25 June 2023.

The Convention on the Rights of the Child (CRC) includes several articles useful in protecting migrant children (for example, Article 11 proscribes trafficking of children under 18 years of age; Article 19 requires States to protect children from violence, abuse, neglect, exploitation and sexual abuse). Each of these instruments has a mechanism through which State parties report on their progress in observing the convention standards.[35]
A number of countries have ratified conventions sponsored by the **International Labour Organisation (ILO)** specifically protecting the rights of migrants. Forty-two countries have ratified the Convention concerning Migration for Employment.[36]

UN Convention on the Rights of All Migrant Workers and Members of their Families
The UN Migrant Workers Convention (MWC) builds on the International Labour Organisation's conventions as well as the core human rights instruments referenced above. It reaffirms basic human rights norms and embodies them in an instrument applicable to migrant workers and their families.[37]

THE CAUSES AND EFFECTS OF MIGRATION
The flows of international migration have increased in amplitude and complexity over the last decades. The phenomenon of migration was analysed mainly through the concept of the push-pull factors. This concept differentiates between the factors that cause people to leave their countries ("push factors"), representing the negative aspects of the country of origin and the factors that attract migrants to a particular country ("pull factors"), representing the positive aspects of the receiving country. Push-pull factors materialise in different forms and are often. decisive in people's choice to migrate.[38] Migration has emerged as one of the world's most controversial issues today and may well become a defining issue that makes the Twenty-First Century as fundamentally different from the last Century. In recognition of this fact, the United Nations Secretary General established the first ever Global Commission on International Migrations, which in its final report in 2005, wrote that some key reasons driving people to migrate include: wage disparities, unemployment, differentials in life expectancies, and education gaps.[39]

i. *Factors regarding safety and security*
Factors regarding safety and security are usually of the highest importance in people`s decision to migrate. Persecution because of one's ethnicity, religion, race, politics or culture can push people to leave their countries. A major factor is war, conflict,

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35 UN Article1 of the United Nations Convention on the Rights of the Child (1989) <https://www.coe.int/en/web/compass/convention-on-the-rights-of-the-child> accessed 25 June 2023
36 International Labour Standards on Migrant workers <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/migrant-workers/lang--en/index.htm> accessed 12 July 2023
37 UN Convention on the Rights of All Migrant Workers and Members of their Family
38 Georgiana Florentina Tataru, Migration – an Overview on Terminology, Causes and Effects (2020) <https://www.researchgate.net/publication/338590488_Migration__an_Overview_on_Terminology_Causes_and_Effects> accessed 20 March 2023
39 Niklaus Steiner, *International Migration and Citizenship Today* (Routeldge 2023) p1 <https://books.google.com.ng/books?> accessed 20 March 2023

government persecution, or there being a significant risk of these. Those fleeing armed conflict, human rights violations or persecution are more likely to be humanitarian refugees. This will affect where they settle, as some countries have more liberal approaches to humanitarian migrants than others. In the first instance, these people are likely to move to the nearest safe country that has migrant friendly policies.[40]

ii. *Persecution and discrimination*

Persecution and discrimination based on nationality, race, religion, political beliefs or belonging to a social group often cause people to move to other safer areas. The danger can be created by the activities of criminal groups or by war. A significant example is the Northern Triangle of El Salvador, Guatemala and Honduras, considered the most dangerous place in the world. All three countries register thousands of crimes committed by local and international gangs, 95% of these crimes remaining unpunished, a consequence of corruption and under-funded institutions. The number of asylum seekers originating from the Northern Triangle reached 110,000 in 2015, an increase of five times from 2012.[41]

iii. *Economic and demographic factors*

Economic factors could cause the population to migrate from poorer areas to developed areas where wages are higher and employment opportunities are more numerous and varied. Most often, the population emigrates due to unemployment, underdevelopment, unfavourable economic conditions and lack of career prospects. At the same time, in developing countries, technology and mechanisation in the agricultural sector significantly reduce the need for labour in rural areas. Hence, the population has no alternative sources of income. Such a context was present in Romania, which, due to its fresh accession to the European Union, represented an important "source" of migrants for the Western countries.[42] Such a country is Italy, where Romanians are the main minority.[43]

iv. *Environmental factors*

Environmental factors could cause the migration of the population because of both natural hazards and their aftermath. Drought results in food shortages and hunger; pollution of water, air and soil creates major risks to the health of the inhabitants, forcing them to migrate to low-risk areas. At the same time, natural disasters such as tsunamis, hurricanes and earthquakes are the causes and effects of migration.

v. *The Social factors*

The social factors that cause migration stem from people's need and desire to achieve a higher standard of living. Thus, they migrate to ensure a better life for themselves

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40 Douglas S. Massey, Economic Development and International Migration in Comparative Perspective <https://www.jstor.org/stable/1972195>accessed 16 April 2024

41 .Ibid

42 Ibid

43 Mohammad Emami, Agricultural mechanization, a key to food security in developing countries: strategy formulating for Iran (2018) <file:///C:/Users/Nanret%20Dakahap/Desktop/IHL%20809/Downloads/s40066-018-0176-2-1.pdf> accessed 16 April 2024.

and their family, in regards to the community (for example, the increased level of tolerance for cultural, sexual, ethnic and religious diversity), the education system (education gap) and the health system, offensive cultural practices like Female Genital Mutilation (FGM).[44]

STATE POWERS AND AUTHORITY

States possess broad authority to regulate the movement of foreign nationals across their borders. States, generally, are able to exercise their sovereign powers to determine who will be admitted and for what period. For example, states have the power to determine the admission of non-nationals into their country, detention of migrants and removal or expulsion of non-nationals. In support of these powers, States may enact domestic law and regulations on such matters as passports, Visas, exclusion and expulsion of aliens and frontier control. States differ in the types of laws and regulations adopted, with some being more restrictive than others, but all States adopt rules that govern ingress and egress to their territories**.** In developing rules to regulate movements across borders, States have absolute jurisdiction over laws and regulations, depending on the reason for entry and exit and the nationality of the persons moving across the border.[45]

This prerogative of states was affirmed in the 1881 *Musgrove v Chun Teeong Toy*[46] decision by the Privy Council and in the 1892 *Nishimura Ekiu v United States*[47]*c*ase where the United States Supreme Court found that:

> It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.[48]

The Universal Declaration of Human Rights (UDHR),[49] as well as the International Covenant on Civil and Political Rights (ICCPR),[50] specifies that nationals have the right to leave and re-enter their countries. Significantly, they do not have the right to enter another country, limiting the ability of persons to exercise their rights. Moreover, even in this respect, States have authority under the ICCPR to place reasonable limitations on exit if related to national security, public order, public health or morals or the proper administration of justice.[51] The ICCPR provides, however, that States may not arbitrarily deny nationals the right to re-enter.

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44 European Parliament, Exploring migration causes: why people migrate (2024) <https://www.europarl.europa.eu/topics/en/article/20200624STO81906/exploring-migration-causes-why-people-migrate> accessed 16 April 2024.

45 Susan Martin, The legal and normative framework of international migration (Global Commission on International Migration) <https://www.iom.int/sites/g/files/tmzbdl486/files/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP9.pdf> accessed 4 July 2023.

46 Musgrove v Chun Teong Toy (Victoria) | [1891] AC 272

47 *Nishimura Ekiu v. United States* :: 142 U.S. 651 (1892)

48 *Musgrove v. Chun Teeong Toy*

49 The Universal Declaration of Human Rights (UDHR),< https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed 12 July 2023

50 The International Covenant on Civil and Political Rights (ICCPR) http://www.eycb.coe.int/compass/en/pdf/6_4.pdf

51 James Crawford, The Criteria for Statehood: Statehood as Effectiveness (2007) <https://academic.oup.com/book/3288/chapter-abstract/144291457?redirectedFrom=fulltext> accessed 16 April 2024.

States may impose different rules and expectations on foreign nationals based on the purpose of their entry, with different rules, for example, for persons who are working, studying, conducting business or touring the country. States may establish special rules based on treaty relations or traditional or cultural ties that effectively give preference or greater access to admissions of nationals of certain other States. States are limited, however, in applying entry and exit rules in a manner that discriminates on such grounds as race, gender, language or religion.[52]

Generally, States have the absolute authority to exclude foreign nationals from entering their territory and expel or deport persons already in their countries. Grounds for exclusion and deportation may be similar: public health, criminal convictions or activities, earlier violations of immigration law, economic reasons, for example, in addition to the national security concerns discussed earlier. Procedures may differ substantially, however, and States generally provide more rights to persons already in their countries to contest their deportation or expulsion. This stance is consistent with international law. Article 13 of the ICCPR[53] provides that aliens lawfully present in a State are entitled to procedural protections prior to being expelled, including review by a competent authority and the opportunity to submit reasons against the expulsion. These procedural rights may be denied, however, if national security so requires. Clearly, those unlawfully present would not be entitled to the same level of procedural protection, although many States recognise that individuals gain equities and rights the longer, they are present on their territory. Moreover, States need to establish a procedure to determine if the alien falls into a category protected against return (e. g. persons fearing persecution or torture).[54]

The prime responsibility for the management of migration lies with states-each state has the right to develop its own migration policy within a legal framework on migration and to protect the security of its population, consistent with existing international principles and norms. States possess broad authority to regulate the movement of foreign nationals across their borders. States exercise their sovereign powers to determine who will be admitted and for what period. In support of these powers, States enact laws and regulations to govern the issuance of passports, Visas, the exclusion and removal of aliens, and border security. States vary in the types of laws and regulations adopted, with some being more restrictive than others, but all States adopt rules that govern entry into and exit from their territories. Such protection and respect are central to the development of effective migration management systems. It needs to be more widely understood that state sovereignty is not undermined when states develop migration management laws and practices that protect the rights of both regular and irregular migrants within their territory.

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52 Susan Martin, The legal and normative framework (, Global Commission on International Migration (GCIM) of international migration (2005) <https://www.iom.int/sites/g/files/tmzbdl486/files/jahia/webdav/site/ myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP9.pdf> accessed 16 April 2024.

53 Summary of ICCPR and ICESCR, <http://www.eycb.coe.int/compass/en/pdf/6_4.pdf> accessed 16 April 2024.

54 Protecting The Right To Freedom Of Expression Under The European Convention On Human Rights< https://rm.coe.int/handbook-freedom-of-expression-eng/1680732814>< accessed 11 July 2023

Some scholars dismiss the idea of migrants presenting a challenge to state sovereignty because the power to determine who enters the border of a country resides in national sovereignty.[55]

CHALLENGES AND OPPORTUNITIES

In many parts of the world, states lack the capacity to control the movement of people across long land and sea borders. In some countries, community relations considerations limit the willingness of authorities to undertake rigorous and intrusive forms of action against migrants with irregular status and the people who employ them. More generally, states are reluctant to introduce measures that would lead to increased restrictions on the movement of their own citizens and on authorised non-citizens such as business travellers and tourists. The challenges are as follows:

Lack of Capacity, Coherence and Cooperation

Most states, especially developing countries or less developed regions of the world, do not have enough capacity required to formulate and implement effective migration policies. Officials dealing with the issues of migration, development, the labour market, education and health need access to more timely, accurate and detailed migration data. They require more extensive professional training, a better knowledge of migration issues, institutions and law, as well as an understanding of the way in which migration and other policies interact with each other. They need resources to monitor and evaluate the impact of their policies and programmes. And they should be able to draw more systematically upon the experience and expertise gained by other countries.

A second issue that must be addressed is that of coherence. Representatives from every part of the world have openly acknowledged the difficulties they encounter in formulating coherent migration policies. In many instances, they are confronted with competing priorities and short-term demands from different ministries within government and from different constituencies outside government. Important decisions taken in areas such as development, trade, aid and the labour market are rarely considered in terms of their impact on international migration. Wider consultation is also required at the national level. Finally, there is a need for enhanced cooperation and coordination between the different multilateral international organisations working in the field of migration. In a meeting convened by the Commission, these organisations have acknowledged that they often work in a disconnected manner.

CONCLUSION

A State's sovereignty is based on the exclusive power that it exercises over its territory and its nationals; it refers essentially to a state's power in exercising exclusive control over its jurisdiction. Migrants are viewed as people who move from one location to another in search of jobs, family reunification, better living conditions or further studies. This article reviewed migration in the context of state sovereignty and the right of states to admit or reject

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[55] D Chigudu, International migration: The state-sovereignty-migration nexus <https://repository.nwu.ac.za/bitstream/handle/10394/16446/01%20Chigudu.pdf?sequence=1> accessed 15 April 2024.

migrants. Although the term sovereignty is so diverse, it remains embedded at the centre of world politics and yet restrictive due to the fast-growing trends of globalisation.

RECOMMENDATIONS

Collaborating with other countries

By collaborating with other countries, states are able to strengthen their ability to control borders and hence their security. A number of recent 'surges' in migration—whether across the US-Mexican border or the Mediterranean—have been reduced only when there has been cooperation among countries of origin and/or transit and countries of destination. When agreements on deterrence or return of migrants are negotiated in the midst of a crisis, rather than in a more orderly process, they tend to be costly to the destination countries, both in violation of the rights of the migrants and in financial terms, as inducements are provided to source or transit countries.

Addressing irregular migration

States should provide additional opportunities for regular migration, and take action against employers who engage migrants with irregular status. States should resolve the situation of migrants with irregular status by means of return or regularisation. States must strengthen their efforts to combat the distinct criminal phenomena of migrant smuggling and human trafficking. In both cases, perpetrators must be prosecuted, the demand for exploitative services eradicated and appropriate protection and assistance provided to victims.

Enhancing governance: coherence, capacity and cooperation

The governance of international migration should be enhanced by improved coherence and strengthened capacity at the national level; greater consultation and cooperation between states at the regional level, and more effective dialogue and cooperation among governments and between international organisations at the global level. Such efforts must be based on a better appreciation of the close linkages that exist between international migration and development and other key policy issues, including trade, aid, state security, human security and human rights. Migrants and citizens of destination countries should respect their legal obligations and benefit from a mutual process of adaptation and integration that accommodates cultural diversity and fosters social cohesion. The integration process should be actively supported by local and national authorities, employers and members of civil society, and should be based on a commitment to non-discrimination and gender equity. It should also be informed by an objective public, political and media discourse on international migration.

Develop programmes

Finally, states should develop programmes that provide shelter and social services to migrant workers who have experienced abuse are essential to protecting their rights. Migrant workers who decide to return home after escaping abusive conditions may also need assistance in repatriation and reintegration. Non-governmental organisations, religious institutions and trade unions provide such assistance in a number of countries.