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“Migration, Poverty, The Role of State, Law and Development in the Industrialised Countries
in Europe”

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Abstract

The current radical strategies by which there is, on one hand, an increasing European assistance to developing poor countries of Africa/Middle East and on the other hand, tightened border-security within Europe as a means to reduce migration from the South; may worsen the state of poverty in Europe, particularly on the immigrants and impact on the workforce in Europe with implication on development. Though, these strategies may sound radically appealing, they are however, unlikely to reduce migration flows to Europe. While there is still a ‘wide development gap’ between the poor countries of Africa/Middle East and industrialised countries of Europe, migration will often increase, at least in the next two-three decades. Radical border security in Europe will expose the migrants to human trafficking in different form and manifestation contrary to Article 3 UN Protocol on Trafficking in Person. The paper examines the role of State and Law and development, in addressing the issues of poverty and migration within the industrialised countries of Europe. The research argues that there is the likelihood that poverty and human right issues will increase in Europe in the near-future, if the State/EU fails to play their role, by changing their policy direction and repositioning themselves by improving their Law and development stance. The research employs the human rights-based approach, interdisciplinary and critical-analytical perspective within the framework of international Law and development. It employs qualitative empirical evidence from developed countries of Europe and poor developing countries for analysis.

Key Words:

International Law, (International) Law & Development, Migration, Poverty, Role of State, Developing Countries, Industrialised Europe, Human Rights-Based Approach

Section 1: Introduction

The multidimensional nature of poverty is recognised, and it is dynamic over time and different among races, nations, communities, and household members. Placed within the context of Law and development research, these basic understandings of poverty generate some unknowns in migration-poverty relationship.¹ While research on migration-poverty linkage is multidisciplinary, this paper takes (an international) legal approach and therefore, is focused on one dimension of poverty – its monetary form – ‘income poverty’ that leads to relative material deprivation.

Migrants from outside the EU tend to face higher poverty rates than the indigenous population. For example, in Belgium, over half of those who have non-EU citizenship, live in poverty, according to the widely used Laeken indicator of poverty (with a threshold of 60% of national median income). The ratio stands at 45% in France and Luxembourg. In several other countries about one in three non-EU migrants tends to be poor.² The heads of government in the EU adopted the Europe 2020 Strategy in 2010 to address poverty. The goal of this was to lift at least 20 million people out of the risk of poverty and social exclusion by 2020.³ Unfortunately, this goal has not been reached and the situation has gotten worse instead of better. There has been an increase in poverty in the EU over the past years. In 2009, there were 117 million people and 27 EU member States at risk of poverty or social inclusion in the EU. Since then,

¹ See A. Haan and S. Yaqub, *Migration and Poverty: Linkages, Knowledge Gaps and Policy Implications*. In: K. Hujo and N. Piper (eds) *South-South Migration. Social Policy in a Development Context*. (Palgrave Macmillan, 2009) London, 190-219.

² See O. Leikes, *Poverty Among Migrants in Europe*, (2007) Policy Brief: European Centre. One in four Europeans experiences at least one form of poverty. Forms of poverty include income poverty, severe material deprivation, very low work intensity and social exclusion. This paper uses income poverty in its analysis – Income poverty is the most common form of poverty in Europe, affecting 17.3 percent of people. One hundred eighteen million people (23.5 percent) of the EU-28 population were at risk of poverty or social exclusion, with 43 million of those not able to afford a quality meal every second day. This is known as severe material deprivation. The poverty line is the minimum level of income needed to secure the necessities of life and differs greatly for each European country. An average of 9.8 percent of people in the EU lives below the poverty line. The country with the lowest amount of people living below the poverty line is Austria at four percent, and the highest is Greece at 36 percent. Immigrants that is foreigner-born residents (39.2 percent) are at a higher risk of poverty or social exclusion than native citizens (21.6 percent). In Italy, the number of foreigners at risk is particularly high at 55 percent. This is one of the 12 facts about poverty in Europe that reveals the enormous gap between wealthier and poorer countries in Europe. See L. Solano-Flórez ‘12 Facts About Poverty in Europe’ available at <https://borgenproject.org/facts-about-poverty-in-europe/#:~:text=%2012%20Facts%20About%20Poverty%20in%20Europe%20,Eurostat%2C%20some%20countries%20rank%20above%20this...%20More%20> (accessed 19/09/2020).

³ See L. Solano-Flórez Ibid.

there has been an increase of 1.6 million people and one country.⁴ The risk of income/monetary poverty in the EU in 2018 was approximately twice as high for foreign citizens (33%) as it was for nationals (15%), and was particularly concentrated among non-EU citizens (38%).⁵ Also, the incidence of severe material deprivation in the EU in 2018 was approximately twice as high among non-EU citizens (13%) as it was among foreign EU citizens (7%) or nationals (6%).⁶

Similarly, there has been an increase and high surge on migration to Europe since the last three decades. The complex nature of devastating humanitarian crisis challenges confronts the people and governments in Africa and Asia, with spill-over effect to Europe due to migration – as manifested by the despondency of swelling numbers of asylum seekers, internally displaced persons and refugees.⁷ Migration distorts the economic system and disintegrates the social fabric, security and governance/administrative potentialities of most of the countries in a volatile region with implications of spilling into Europe,⁸ especially through unlawful and precarious migratory flows that most times lead to fatal loss of human lives.⁹ Recent statistics show that 2.4 million immigrants entered the EU-27 from non-EU-27 countries in 2018, and 21.8 million people (4.9%) of the 446.8 million people living in the EU-27 on January 2019 were non-EU-27 citizens.¹⁰

The increase in migration flows to Europe has prompted EU States to adopt two radical responses or strategies. One has been to strengthen EU internal and external borders to prevent migrants making their way to Europe that is tightening border security within Europe as a means to reduce migration from the South.¹¹ Throughout Europe, leaders are succumbing to keep-them-out syndrome; for example, Hungary is building a fence (along its border with

⁴ Ibid.

⁵ Eurostat ‘*Migrant Integration Statistics – People at Risk of Poverty and Social Exclusion*’, Eurostat available at https://ec.europa.eu/eurostat/statistics-explained/index.php/Migrant_integration_statistics_-_at_risk_of_poverty_and_social_exclusion (accessed 22/9/2020).

⁶ Ibid.

⁷ J. Chamie, *Desperate Migration in the Middle East*, (2015) *YaleGlobal Online* available at <https://yaleglobal.yale.edu/content/desperate-migration-middle-east> (accessed 23/09/2020). This paper will use migration to represent all classes of travellers (asylum seekers, internally displaced persons and refugees etc) to EU.

⁸ See C. Dustmann, T. Frattini, and A. Glitz, *A Review of the Economic Evidence*, (2007) Final Report, Centre for Research and Analysis of Migration (CReAM), Department of Economics University College London & EPolicy Ltd.

⁹ J. Chamie 2015 supra note 6.

¹⁰ L. Solano-Flórez, supra note 2.

¹¹ Y. Hatip, *EU to Tighten Border Security as Migrant Arrivals Rise* available at <https://www.worldbulletin.net/europe/eu-to-tighten-border-security-as-migrant-arrivals-rise-h202124.html> (08/10/2020).

Serbia). Spain has done the same (in Ceuta and Melilla). Bulgaria followed suit (on the border with Turkey). More fencing is springing up in Calais. Even in Macedonia, which is not in the EU, they are deploying armoured vehicles against migrants.¹² Two, is an increasing European assistance to developing poor countries of Africa/Middle East. This has been for the purpose of meeting basic needs rather than investing in sustainable long-term goals; however, the EU block is beginning to address this limitation. Currently, this funding is intended to support policy reforms for long-term initiatives that benefit migrants and host communities.¹³ The integration of refugees into host societies is at the heart of this approach. For example, the global remittances to low-and-middle income countries reached a record \$529 billion in 2018; around \$46 billion was sent to sub-Saharan Africa in 2018.¹⁴

The paper examines the role of the State and Law and development in addressing the issues of migration and poverty within the industrialised countries of Europe. The central argument the paper puts forward is that the radical strategies of tightening border security within the Europe and increasing European assistance to poor developing countries may sound appealing; however, they are unlikely to reduce migration flows to Europe. Increasing development at the stage where there is still a ‘wide gap’ between the developing poor countries of Africa/Middle East and developed industrialised countries of Europe will often increase migration, at least in the next two-three decades.¹⁵ Radical border security in Europe will expose the migrants to human trafficking in different form and manifestation (forced labour, sex trafficking, removal of organ, domestic servitude, illegal adoption, and servile marriage) contrary to UN Protocol on Trafficking in Person.¹⁶ Thus, there is the likelihood that poverty and human right issues will increase in Europe in the near-future, if the State/EU fails to play their role, by changing their policy direction and repositioning themselves by improving their Law and development stance, in order to gain the huge mutual benefits from migration.

¹² Guardian, *National Readership Survey* 21 August 2015, available at <http://advertising.theguardian.com/national-readership-survey/>

¹³ S. Fine, S. Dennison, & R. Gowan, *False Moves: Migration and Development Aid*, (2019), European Council on Foreign Relations (ecfr.eu) Policy Brief.

¹⁴ Ibid.

¹⁵ A few scholars have also thought in this direction; for example, see N. Khattab & H. Mahmud, Migration in a Turbulent Time: perspective from the global south, (2018) *Migration and Development, Vol. 8, Issue 1, 1-6*.

¹⁶ See Article 3 the Protocol to Prevent, Suppress and Punish Trafficking in Persons. The United Nations Convention against Transnational Organised Crime adopted by General Assembly Resolution 55/25 of 15 November 2000 – is the main international instrument in the fight against transnational organised crime, available at <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> (accessed 10/10/2020)

In terms of Method and Approach, the paper employs the human rights-based approach (HRBA), interdisciplinary and critical-analytical perspective within the framework of international Law and development. It employs qualitative empirical evidence from developed / industrialised countries of Europe and poor developing countries for the analysis. While the HRBA is used to analyse the development and human rights implications on the issues of migration and poverty, from the perspective of the role of the State in Europe; the interdisciplinary and critical-analytical perspective involves employing literature in the legal, politics/IR, economics, and international development. This will be critically analysed within the framework of international Law and development. The qualitative empirical evidence is employed by gathering relevant material from developing countries and developed/industrialised countries of Europe for an in-depth analysis.

The paper is structured into five sections – Section 1 introduces the paper and presents the methodology, including looking at the Human Rights-based approach, which the paper employs for the analysis. Section 2 looks at the migration and poverty linkage and provides some examples from the EU. Section 3 considers the EU’s strategy of tightened border security and the human rights implication. Section 4 discusses increased development assistance and the effect on migration to Europe. Section 5 examines and analyses the role of the State/EU and Law and development challenges in Europe; before summarising and concluding.

1.1: *Human rights-based approach*

The paper employs Human Rights-based approach (HRBA) in the analysis section to demonstrate that there is the likelihood that poverty and human right issues due to migration will increase in Europe in the near-future, if the State/EU fails to play their role, by changing their policy direction and repositioning themselves by improving their Law and development stance, in order to gain the huge mutual benefits from migration. The equal and inalienable rights of all human beings provide the foundation for freedom, justice and peace in the world, according to the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948.¹⁷ From an interdisciplinary Law perspective; human rights are probably the dominant

¹⁷ ‘All human beings are born free and equal in dignity and rights’, available at <https://www.un.org/en/universal-declaration-human-rights/> (12/11/2020)

normative conception in the contemporary globalising world.¹⁸ It is common for struggles for national self-determination, the recognition of alternative identities, class-based and labour empowerment, gender equality, democratic inclusion, property rights protections, rectification of State violence, and consumer goods to use rights discourse – in spite of varying political orientations and alliances among the actors involved.¹⁹ Similarly, development has become relevant to human rights. Whereas it was understood primarily in the terms of economic output from about 1950 to 1970, and concerned with poverty from around 1970 to 1990, development has in the past two decades increasingly been framed in the language of human rights and related concepts, such as fundamental human capabilities and multi-dimensional poverty.²⁰ Thus, development has come to be seen as part of human rights framework. There is relationship between human rights and development; from a legal point of view human rights are the subject of binding international legal obligations and their relevance to development can be understood in the light of this.²¹

The HRBA focuses on those who are most marginalised, excluded or discriminated against. This requires an understanding of power imbalances among other things, to ensure that interventions reach the most marginalised segments of the population.²² There are three major elements that necessitate good practices under a HRBA and enhance important roles in its implementation: (i) participation and inclusion – people are recognised as key actors in their own development, rather than passive recipients of commodities and service and the participation is both a means and a goal and strategies are empowering, not disempowering;

¹⁸ Globalisation is the integration of poor countries into a world economy of open competition Martell See L. Martell, *The Sociology of Globalisation*, 2nd ed. (Cambridge Publishing, 2017) UK, p.148. While, anti-globalists see globalisation as producer of inequality, others view it as equalising, democratising and expanding the horizon of the poor; in effect, claim that the world is globalised See P. Bardhan, Does Globalisation Help or Hurt the World’s Poor?: Overview/Globalisation and Poverty, Scientific American at <https://www.scientificamerican.com/article/does-globalisation-help-o-2006-04/> (accessed 09/10/2020). However, the reality is that trends of events within the international system suggest that ‘*the world is still globalising and not yet globalised*’ – if China is taking out from the space/picture, the global economic situation has worsened in other parts of the developing world. For example, the poverty in Sub-Saharan Africa has risen from 290 million to 415 million and “at the end of the nineteenth century, the ratio of average income in the richest countries to income in the poorest was 9 to 1.” L. Martell, Ibid. Similarly, the middle-income family in the United States is 60 times richer than the average family in Ethiopia or Bangladesh See N. Birdsall, *Asymmetric Globalisation: Global Markets Require Good Global Politics*: (2012) Brookings.

¹⁹ See V. Gauri and S. Gloppen, *Human Rights Based Approaches to Development Concepts, Evidence, and Policy* -Research Working Paper – (2012) The World Bank Development Research Group.

²⁰ Ibid.

²¹ See S. McInerney-Lankford, Human Rights and Development: A Comment on Challenges and Opportunities from a Legal Perspective, (2009) *Journal of Human Rights Practice*, Vol.1, Issue 1, 51-82.

²² UNFPA, *The Human Rights-Based Approach* available at <https://www.unfpa.org/human-rights-based-approach> (accessed 18/10/2020).

(ii) non-discrimination and equality – programmes focus on marginalised excluded groups and aim to reduce disparities and empower those left behind; and (iii) accountability – human rights standards guide the formulation of measurable goals, targets and indicators in programming and accountability systems need to be strengthened with a view to ensure independent review of government performance and access to remedies for aggrieved individuals.²³ In terms of implementation, the approach is related to the process of empowerment; forms of advocacy, and the use of legal instruments in defence or protection of groups of people who are poor, discriminated against, marginalised or whose rights are violated.²⁴

In line with HRBA, it is the view of this paper that there is the likelihood that poverty and human right issues will increase in Europe in the near-future because of influx of migrants, if the State/EU fails to play their role by changing their policy direction and repositioning themselves by improving their Law and development posture. This is for the purpose of implementing policies that maximise migration mutual benefits, as this paper intends to demonstrate in the following sections. The politics around migration are challenging almost everywhere and Europe is not an exception. Dealing with the recent influx of migrants and refugees to Europe has brought out underlying tensions, which have compelled the EU to take some drastic actions such as tightening border security with implication on human rights.²⁵ While both the EU Commission’s 2016 Communication²⁶ and the 2017 New European Consensus on Development²⁷ show her commitment to the 2030 UN Agenda for Sustainable Development Goals (SDGs)²⁸ – all goals have linkage to human rights. However, the EU approach to migration is against the Law and development prescriptions – despite the global and EU’s ambition to stress the interlinkage between the rule of Law and economic

²³ Ibid; See also M. Broberg & H. Sano, Strengths and Weaknesses in a Human Rights-based Approach to International Development: an analysis of a rights-based approach to development assistance based on practical experiences, (2018) *The International Journal of Human Rights*, Vol. 22. Issue 5.

²⁴ M. Broberg & H. Sano, Ibid

²⁵ For example, See C. Strohal, The EU Migration Crisis and the Human Rights Implications of the Externalisation of Border Control, (2018) *European Yearbook on Human Rights*.

²⁶ See European Commission, *Next Steps for a Sustainable Future: European Action for Sustainability*, COM (2016) 739 final.

²⁷ Joint Statement by the Council and the Representatives of the Governments of the Member States Meeting within the Council, the European Parliament and the European Commission, The New European Consensus on Development – ‘Our World, Our Dignity, Our Future’ available at <https://op.europa.eu/en/publication-detail/-/publication/ca80bb57-6778-11e7-b2f2-01aa75ed71a1/language-en/format-PDF> (accessed 11/10/2020)

²⁸ This was adopted by the UN General Assembly (UNGA) on 25 September 2015, represents a comprehensive ‘plan of action for people, planet and prosperity’ – See UNGA, *Transforming Our World: The 2030 Agenda for Sustainable Development*, (2015) A/RES/70/1. P.3.

development, it remains questionable whether this has been translated into action in the recent EU’s migration challenge, especially the role of the State/EU as a development actor.

Section 2: Migration and Poverty Linkage

While several researches has been conducted on migration and poverty as separate subjects; the relationship between the two phenomena has hardly been considered in detail by scholars, except in situations where anecdotal evidence is adduced on plausible effects of one on the other.²⁹ In order to consider their interrelatedness, a good starting point is to briefly understand what migration and poverty is all about.³⁰ Although, the two concepts seem simple to require defining because they appear in the work of experts in the subjects and non-experts, and therefore treated as a given; but often evoke different meanings in the literature.³¹

A simple and direct definition of ‘migration’ is the spatial mobility or geographic mobility of population that involves a change of usual place of residence.³² Defining migration requires identification of boundaries across which movements take place, duration of such movements, knowledge of the moves but not necessarily reason for their movement.³³ In recent years, the international community and individual States give much concentration on issues of international migration.³⁴ Displacements of populations in large numbers as a result of conflict and natural disaster often receive major media coverage, but it is the constant and significant flows of migrants drawn by the anticipated prospect of improved economic, political, and social conditions that have recently generated the most concerted attention and with it, new paradigms

²⁹ The few works that have considered the linkage between migration and poverty are not recent and rarely in law, just like this 2002 work J. Oucho, *The Relationship Between Migration and Poverty in South Africa* available at https://www.researchgate.net/publication/265143060_The_relationship_between_migration_and_poverty_in_Southern_AfricaPDF (accessed 13/10/2020).

³⁰ A. de Haan, and S. Yaqub, *Migration and Poverty: Linkages, Knowledge, Gaps, and Policy Implications*, (2008) Department for International Development.

³¹ J. Oucho, *supra*, note 28.

³² See V. Walle, Migration and Fertility in Ticino (1975) *Population Studies, A Journal of Demography*, Vol. 29, Issue 3, 447-462.

³³ J. Oucho, *supra*, note 28.

³⁴ See L. Ezzarqui, *Research Paper on Migration, Alliance of Civilisation Secretariat* – based on a background research report prepared by Y. Soysal, University of Essex available at https://www.unaoc.org/repository/thematic_migration.pdf (13/10/2020).

for understanding the phenomenon.³⁵ International migration is a complex subject, the more so since no country is exempt from its effects; virtually every country is both a country of origin and a country of destination for migrants; and because it can be repetitive in the life of an individual.³⁶ Migrants have different categorisation: migrant skilled/unskilled workers, migrants admitted for family reunification, as refugees, as students, or without documentation, illegal or clandestine.³⁷ State policies on migration therefore vary with the nature of the migrant or the classification of the migrant, but this paper is concerned with international migration and recent influx of migrants and migration policies in the EU.

Poverty is a complex concept because it takes various dimensions at different levels in the society and most elusive definition. The United Nations Development Programme provides six definitions as follows: (i) human poverty denotes the lack of essential human capabilities, such as being literate or adequately nourished; (ii) income poverty means the lack of minimally adequate income or expenditure; (iii) extreme poverty is indigence or destitution, usually specified as the inability to satisfy even minimum food needs; (iv) overall poverty refers to a less severe level of poverty, usually defined as the inability to satisfy essential non-food as well as food needs, the former varying considerably across countries; (v) relative poverty is poverty defined by standards that change across countries or overtime – in terms of mean per capita income—and often used loosely to mean overall poverty; and (vi) Absolute poverty is defined by a fixed standard, e.g. the international “\$1 a day” poverty line, which permits comparison of poverty across different countries, or a poverty line whose real value stays the same over time in order to determine changes in poverty in one country.³⁸

In relation to the notion of absolute or ‘subsistence poverty’ the poor comprise those households whose *income falls* below a level necessary to satisfy the basic needs of their members in housing, nutrition, and clothing. Any stipulation of basic needs will of course be arbitrary to a degree, but it will at least provide some rough measure of the dimensions of human misery. Tropical Africa contains a disproportionate share of the world’s poor, whether

³⁵ Ibid.

³⁶ Ibid

³⁷ J. Oucho, *supra*, note 28. This paper does not use such categorisation but simply ‘migration’ as a connotation.

³⁸ UNDP, *Poverty Report 1998: Overcoming Human Poverty*. UNDP: New York

these are defined by reference to absolute or relative standards.³⁹ It was however, argued for the Europe that explanation (for the elimination of absolute poverty) lies largely in the fact that by about 1950 the great economic problems had been brought under control in the industrial countries. Unemployment had been reduced to historically very low levels; absolute poverty at the level it is being perceived in the poor developing countries had been largely eliminated.⁴⁰ This paper takes (an international) legal approach and therefore, is focused on one dimension of poverty – its material dimension – income poverty, in its relative terms, in consideration of poverty in Europe.

This paper presents two perspectives to the interrelatedness or relationship as determined by whether migration or poverty is domestic or international in character. On one hand, that migration causes poverty among migrants, in others alleviates poverty or discriminates poverty alleviation on migrants or households; on the other hand, that poverty causes migration to ensure minimal standard of survival, in others discourages migration.

The first perspective – migration causes and/or alleviates poverty; a plethora of literature on the influence of migration on poverty underlines its positive impact.⁴¹ But there is caution that the impact of migration is difficult to assess in any absolute or objective sense, especially by those actually involved. Not only does it touch on virtually, every aspect of life, but it presents on combination of costs and benefits that are not easy to disentangle.⁴² Migration, particularly international migration (such as migration to developed countries, e.g., Europe) has historically been a source of opportunities for people to improve their lives (compared to when they are in their home country) and those of their families. In recent years, the large differences in income between places, particularly countries – continue to motivate individuals to escape poverty through migration.⁴³ The potential advantages of migration for sending countries are

³⁹ See B. Ikejiaku, The Concept ‘Poverty’ towards Understanding in the Context of Developing Countries ‘poverty qua poverty’, with some Comparative Evidence on Britain, (2009) *Journal of Sustainable Development*, Vol. 2, No. 2, 3-13. See also R. Sandbrook, *The Politics of Basic Needs*. (Heinemann: London, 1982).

⁴⁰ B. Ikejiaku, Ibid. See also D. Seers, *The Meaning of Development*. IDS Communication, 44: (1969) Institute of Development Studies.

⁴¹ For example, See M. Hendriks and D. Bartram, Bringing Happiness into the Study of Migration and Its Consequences: What, Why, and How? (2019) *Journal of Immigrant & Refugee Studies*, Vol. 17, Issue 3, 279-298. See also W. Betz and N. Simpson, The Effects of International Migration on the Well-being of Native Population in Europe (2013) *IZA Journal of Migration* 2, 12.

⁴² See B. Dodson, *Women on the Move: Gender and Cross-Border Migration to South Africa*. The Southern African Migration Project, (1998) Migration Policy Series No. 9. Cape Town: IDAS and Kingston, Ontario, Queen’s University, p.25.

⁴³ See M. Edmundo, L. Jennica, and S. Marcin, *Migration and Poverty: Toward Better Opportunities for the Poor*, (2011) Directions in Development: Poverty, World Bank Group.

numerous; for example, through remittances, migration provides a means of improving income in the country of origin.⁴⁴ Recent statistics suggest that remittances to low-and middle-income countries reached \$551 billion in 2019 and are on track to \$597 billion by 2021.⁴⁵ There is little doubt that voluntary migration from a poor to a rich country almost always benefits the individual migrant, who may easily find themselves earning in an hour what they earned in a day in the country of origin. The issue is that the benefits to individuals (and, commonly, their relatives left behind) do not aggregate to a general benefit to the home country.⁴⁶ However, migration (especially due to conflict and humanitarian crises) causes poverty, particularly on the migrants in the destination countries; in the EU, so long as key sectors of the Europe economy rely on a low paid, insecure, casualised workforce, economic migrants will encounter poverty.⁴⁷

Second perspective – poverty causes migration and discourages migration – poverty stimulates emigration and engenders inequality; poor countries or societies globally generally breed generations of emigrants for richer or relatively richer counterparts.⁴⁸ Although, migration increases income and often reduces poverty, the migration opportunities of the poor are different – among the poor there are fewer migrants due to lack of funds which shows that poverty discourages migration, to others it causes migration, but those that migrate travel to cheaper destinations with lower returns. Therefore, the main barriers to emigration encountered by the poor are lack of opportunities and high costs.⁴⁹ The UN report shows that international migrant numbers have risen by a fifth over four years to 280m from 2014 to 2018 – this is due to rising instances of conflict and poverty that have driven a 20% increase on international migration.⁵⁰ Europe has had a greater influx of migration caused by conflict and humanitarian crisis (with poverty implication). For example, almost nine years into the Syria crisis, the

⁴⁴ Ibid.

⁴⁵ World Bank, *Leveraging Economic Migration for Development*, (2019) A briefing for the World Bank, Migration and Remittances Team World Bank Group.

⁴⁶ K. Newland, Migration as a Factor in Development and Poverty Reduction, (2003) Migration Information Source, *The Online Journal of Migration Policy* Institute available at <https://www.migrationpolicy.org/article/migration-factor-development-and-poverty-reduction/> (20/10/2020).

⁴⁷ S. Pemberton, J. Phillimore, D. Robinson, *Causes and Experiences of Poverty among Economic Migrants in the UK*, (2014) IRIA Working Paper Series, No/2014, Birmingham, Institute for Research into Superdiversity.

⁴⁸ J. Oucho, *supra*, note 28.

⁴⁹ M. Edmundo, L. Jennica, and S. Marcin (2011), *supra*, note 42.

⁵⁰ R. Partington, *Conflicts and Poverty Drive: Big Jump in Global Migration*, The Guardian 5 December 2018.

United Nations Refugee Agency (UNHCR) has registered over 5.6 million Syrian refugees; of which large numbers have made the dangerous journey across the Mediterranean to Europe.⁵¹

Section 3: Development Assistance and Migration

The way the EU relates with developing countries has, in recent years, been increasingly propelled by the interest to reduce illegal migration to Europe. This is in the context of unprecedented influx of migrants across the Mediterranean, particularly since 2015 – the EU has sought to change its strategy towards dealing with countries and regions from which irregular migrants originate.⁵² Besides lack of economic opportunities and other economic determinants, a combination of push and pull factors underpinned by a complex, and often inter-related, set of elements influence migration decisions of individuals. Rising political persecution, human rights violations, environmental issues such as climate change and drought, ethnic tensions, political instability and civil conflicts in Africa and Middle East countries are all significantly associated with increased migration flows into European destination countries.⁵³

The paper argues that one of the radical strategies adopted by the EU to tackle migration flows into Europe is through an increasing European assistance to developing poor countries of Africa and Middle East. Confronted with the failure of, or ineffective traditional immigration controls, the policymakers in the Europe have increased development assistance as one of the strategies to reduce migrant inflows.⁵⁴ Europe’s development-assistance programs have become more firmly focused on the irregular migrant source countries and are designed to help keep migrants at home. This dynamic shift has occurred despite concern and criticism that these approaches are diverting European aid away from poverty alleviation to the

⁵¹ See R. Anholt and G. Sinatti, Under the Guise of Resilience: The EU Approach to Migration and Forced Displacement in Jordan and Lebanon (2019) *Contemporary Security Policy*, Vol.41 Issue 2, 311-335.

⁵² See H. Crawley and B. Blitz, Common Agenda or Europe’s Agenda? International Protection, Human Rights and Migration from the Horn of Africa (2018) *Journal of Ethnic and Migration Studies*, Vol. 45 Special Issue 2258-2274.

⁵³ See J. Gimenez-Gomez, Y. Walle, and Y. Zewdu-Zergawu, Trends in African Migration to Europe; Drivers Beyond Economic Motivation (2019) *Journal of Conflict Resolution*. See also H. Crawley & B. Blitz, Ibid.

⁵⁴ See J. Gamso and F. Yuldashev Targeted Foreign Aid and International Migration: Is Development – Promotion and Effective Immigration Policy (2018) *International Studies Quarterly*, Vol. 62, Issue 4, 809-820.

political expediency of curbing migration.⁵⁵ The policy conception is to expect development assistance to improve living standards in source countries, thereby deterring inhabitants in developing countries from traveling abroad.⁵⁶ While this idea sounds intuitive and makes an interesting sense, and supports an increasing common justification for European development assistance to Africa and Middle East – the notion that it will reduce migration from the South.⁵⁷

Good cases in point are, the EU has increased development assistance to primary Sub-Saharan Africa high-migrant transit countries, including Ethiopia, Mali, Niger, Nigeria and Senegal. This has led to a range of new and increased foreign assistance programs focused on these countries.⁵⁸ Also, the proposed EU budget (2021-2027) increases EU overseas spending by a third over the previous period to 123 billion euros, with the highest increase in sub-Saharan Africa.⁵⁹ Similarly, the EU External Investment Plan has set high targets of generating 44 billion euros of European investment in African countries, with its defined goal to ‘address the root causes of irregular migration.’⁶⁰ Other steps taken to address flows of migrants from the Middle East have included EU financial contributions to the fight against ISIS in Iraq and Syria.⁶¹ As of 2018, 2.8 billion euros (\$3.1 billion) of aid has been pledged to the EU Trust Fund – money which has mostly been drawn from the existing budget of the European Development Fund, an aid instrument focused on the countries of Africa, the Caribbean and the Pacific.⁶² In 2015, due the peak of immigration crisis in Europe, EU Emergency Trust Fund for Africa was created – a development instrument that promised to address the root causes of irregular/ undocumented/ clandestine migration through the flexible, speedy and efficient delivery of support to foster stability and

⁵⁵ See C. Ries and S. Culbertson, *This is how Europe Dealt with Migration*, The National Interest available at <https://nationalinterest.org/feature/how-europe-dealt-migration-37577?page=0%2C1> (20/10/2020).

⁵⁶ J. Gamso and F. Yuldashev, *supra*, note 54.

⁵⁷ See M. Ahmed and K. Gough, *African Migration to Europe Is Not a Crisis. It’s an Opportunity*, (2018) Centre for Global Development, available at <https://www.cgdev.org/blog/african-migration-europe-not-a-crisis-its-an-opportunity>.

⁵⁸ C. Ries and S. Culbertson, *supra*, note 55.

⁵⁹ See E. Kawecka-Wyrzykowska, Assessment of the European Commission’s Proposal for Financing the EU Budget in 2021-2027, (2020) *International Journal of Management and Economics*, Vol. 56, Issue 3, 193-208.

⁶⁰ C. Ries and S. Culbertson, *supra*, note 55.

⁶¹ *Ibid*.

⁶² J. Abrahams, *Europe’s Risky Experiment: Can Aid be Used to Deter Migration?* Devex, London, available at <https://www.devex.com/news/europe-s-risky-experiment-can-aid-be-used-to-deter-migration-90426> (21/10/2020).

contribute to better migration management in the regions seen as central to Europe’s migration challenge: The Sahel and Lake Chad, the Horn of Africa, and North Africa.⁶³

Literature on aid and migration shows mixed results and thus, seems to be divided.⁶⁴ A recent study demonstrates diverse effects of various aid programmes, suggesting that whereas governance aid has the capacity to deter emigration by enhancing government capacity and easing political push factors; economic and social aid has the tendency to enhance migration by improving individual’s financial strength and capacity to travel.⁶⁵ Using a panel empirical evidence of 101 developing countries covering 25 years (1985-2010), the findings of the study is that governance aid reduces emigration rates from developing countries, but other types of aid do not reduce migration.⁶⁶ However, the majority view of scholars and analysts is that development assistance does not reduce migration. There is scant or little academic literature raising hope that foreign aid can be a useful instrument to mitigating civil conflict that instigates emigration. A review of 19 existing studies on this subject that employed an approach for casual identification – including single – country studies (in a diverse context as Afghanistan and Colombia) and cross-country studies concluded that:

The evidence for a violence-dampening effect of aid in conflict zones is not strong. Aid in conflict zones is more likely to exacerbate violence than to dampen violence. A violence-dampening effect of aid appears to be conditional on relatively secure environment for aid projects to be implemented.⁶⁷

It is therefore, right to argue that it is unlikely that European development assistance to Africa and Middle East will reduce migration from the South; the strategy of targeting foreign assistance toward stemming migration is likely not going to work.⁶⁸ As communities become less poor, more people gain the financial abilities and confidence to embark on expensive travel to Europe to seek for greener pastures and better life.⁶⁹ Increasing prosperity in developing countries has historically often led to high migration to Europe rather than reduce it.

⁶³ Ibid.

⁶⁴ See for example, J. Gamso, J. Lu, & F. Yuldashev, Does Foreign Aid Volatility Increase International Migration? (2020) *The Review of International Organisation*, Vol. 15, Issue 4; See also M. Lanati and R. Thiele, *Development Aid can Dampen Migration if it Improves Public Services* (2018) MEDAM Policy Brief, Ifw, Kiel.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ J. Gamso, J. Lu, & F. Yuldashev, *supra*, note 64.

⁶⁸ C. Ries and S. Culbertson, *supra*, note 55.

⁶⁹ M. Ahmed and K. Gough, *supra*, note 57.

Migration will likely remain a long-term challenge for European politics, institutions, governments, and values. Even with the drop in numbers and development of institutional capabilities to manage it, the EU still has important tasks ahead of it.⁷⁰ The combination of demographic imbalances and economic inequalities means that migration flows between developing countries and Europe will likely grow in the next two to three decades.⁷¹ For example, statistics suggests that by 2050, Sub-Saharan Africa will have 800 million new active workforces – this population explosion will be full of young, energetic job seekers, and local markets will not be able to absorb and provide meaningful opportunities for all of them. At the same time, by 2050, more than 34 percent of Europe’s population is expected to be age 60 or older and Europe will continue to age, with labour demand exceeding supply in critical and vital sectors of the Europe’s economy.⁷² Along these existing demographic realities, there are the persisting disparities in living standards between the north and south.⁷³ Even, supposing Africa and Middle East average per capita incomes were to double in each of the next three decades, by 2050 the income gap with Europe will still be so wide that migration will be a favourable possibility for the locals.⁷⁴ Besides economic drive, many migrants will be driven by conflict or by already obvious deleterious impact of climate change and humanitarian crisis in developing countries of Africa and Middle East.⁷⁵

The bottom line is that over the next three decades, it is highly likely that tens of millions of new workers will come to Europe to run factories, provide healthcare and education, and deliver the services that make modern economies functional and comfortable for their residents.⁷⁶ The policy choice open to Europe is not whether there will be large scale migration, but how-to manage it in a way that is economically beneficial and socially sustainable to the migrants and the host (Europe). This will be analysed in section five under the roles of the State. To draw our attention, the position of this paper is, there is the likelihood that poverty and human rights issues will increase in Europe in the near-future, if the State/EU fails to play their role, by changing their policy direction and repositioning themselves by improving their Law and development stance, in order to gain the huge mutual benefits from migration.

⁷⁰ C. Ries and S. Culbertson, *supra*, note 55.

⁷¹ M. Ahmed and K. Gough, *supra*, note 57.

⁷² C. Ries and S. Culbertson, *supra*, note 55.

⁷³ N. Khattab and H. Mahmud, *Migration in a Turbulent Time; Perspective from the Global South (2019) Migration and Development, Vol. 8, Issue 1, 1-6.*

⁷⁴ C. Ries and S. Culbertson, *supra*, note 55.

⁷⁵ *Ibid.*

⁷⁶ G. Abel and R. Muttarak, *Climate, Conflict, and Forced Migration (2019) Global Environmental Change, Vol. 54, 239-249.*

Section 4: Migration, Tighten Boarder Security and Human Rights Implication

Scholars argue that the politics around migration are as hard as they are everywhere.⁷⁷ However, while the fundamental transformations in the migration phenomenon within Africa and Middle East seem to be driven by accelerated social and economic changes that have increased their capacities and aspirations for migration;⁷⁸ the increased irregular or forced migration flow to Europe is mainly driven by poverty and underdevelopment associated to incessant conflict, humanitarian crisis and natural disaster.⁷⁹ Migration falls in the category of forced, in so far as an individual’s vital subsistence needs would otherwise be unmet;⁸⁰ the situations that constitute threats in this regard are quite diverse and include civil wars, severe environmental degradation, and perhaps even economic convulsions resulting from globalisation process (e.g., via forced labour) a scenario equivalent to possibility that persecuted dissidents could avoid persecution not only through emigration but also by ceasing their dissent.⁸¹ This is in line with the International Organisation for Migration (IOM) definition of forced migration as “a migratory movement in which an element of coercion exists, including: threats to life and livelihood, whether arising from natural or man-made causes (e.g., movements of refugees and internally displaced persons as well as people

⁷⁷ See for example, S. Katwala and S. Ballinger, *The Politics of Immigration: The Surprising Lessons of the 2015 General Elections and what they mean for new party leaders* (British Future, 2015); A. kuusisto-Arponen and M. Gilmartin, *The Politics of Migration, (2015) Political Geography, Vol.48, 143-145*; and M. Geiger and A. Pecoud, *International Organisations & The Politics of Migration (2014), Journal of Ethnic & Migration Studies Issue 6, 865-887*.

⁷⁸ H. Hassan, *Transformations of Forced Migration in Africa: Issues and General Problems (2020) African Journal of Political Science and International Relations, Vol. 14, Issue 2, 74-83*.

⁷⁹ C. Ries and S. Culbertson, *supra*, note 55

⁸⁰ A. Betts, *Survival Migration: A new Protection Framework: Global Governance, (2010) A Review of Multilateralism and International Organisation, 16(3), 361-382*.

⁸¹ D. Bartram, *Forced Migration and ‘rejected alternatives’: A Conceptual Refinement (2015) Journal of Immigrant and Refugee Studies, 13(4), 439-456*.

displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects)”⁸².

The flow of migration, especially those seeking irregular access to Europe has increased dramatically. Most of these people are fleeing from conflict and violence in their home countries. Statistics suggest that more than 13 million people inside Syria still need humanitarian assistance and nearly half are in dire need as a result of having fled their homes, of hostilities and limited access to food, healthcare and other basic needs.⁸³ Similarly, Iraqis are facing a resurgence of violence and conflict, including in relation to so-called Islamic State: over four million Iraqis are currently displaced within and outside the country.⁸⁴ In Afghanistan, Somalia, South Sudan, the Central African Republic, Mali, Nigeria and Eritrea, protracted conflicts and crises threaten the lives of millions of civilians, forcing many to leave their home country, particularly since 2015 in search of safety and security in Europe and elsewhere.⁸⁵ The greater number of persons forcibly displaced in Asia, especially the Middle East are the consequence of the civil wars in Iraq, Libya, Syria and Yemen since 2012.⁸⁶ For 27 Member States of the European Union, asylum claims increased by 15 percent. Also, tens of thousands of growing numbers of desperate migrants from Africa, especially from the Sahel, notably Eritrea and Somalia are travelling through illegal routes in hopeful-bids of being smuggled to the safety, opportunities and greener pastures offered in Europe.⁸⁷

Dealing with the recent and rapid flows of migrants has brought out underlying tensions within societies and divisions among European States. In order to address this persisting migration challenges, Europe seems to have decided to approach migration crisis as a security issue.⁸⁸ In the last five years or so, migration tops the European policy agenda – aside from its intrinsic importance, it has become one facet of European relations with the outer world. Defined as a strategic priority impinging on overall stability, the management of migration is considered as

⁸² IOM, *International Migration Law: Glossary on Migration* (2011) International Organisation for Migration.

⁸³ VOA, UN Official: over 13 Million People Inside Syria Need Aid at <https://www.voanews.com/world-news/middle-east-dont-use/un-official-over-13-million-people-inside-syria-need-aid> (accessed 09/11/2020).

⁸⁴ Ibid

⁸⁵ See V. Metcalfe-Hough, *The Migration Crisis? Facts, Challenges and Possible Solutions* (2015) Briefing Paper: Shaping Policy for Development, Oversea Development Institute (ODI).

⁸⁶ Estimates for 2014 indicate that the Middle East countries with the largest numbers of refugees are Jordan at 2.8 million; State of Palestine, consisting of the West Bank and Gaza Strip, 2 million; Turkey, 1.7 million; Lebanon, 1.6 million; and Iran, close to 1 million; Ibid.

⁸⁷ See E. Brouwer, *International and European Migration Law (2012) Utrecht Journal of International and European Law Vol. 28 Issue 75, editorial 1-3.*

⁸⁸ See S. Ferreira, *Human Security and Migration in Europe’s Southern Borders*, (Palgrave Macmillan, 2019).

a security matter needing coordination and cooperation processes at more levels and with more actors.⁸⁹ The European Union has taken up migration and displacement as key security challenges in the 2016 EU Global Strategy for Foreign and Security Policy. In particular, the EU has turned to building the resilience of States and societies to insecurity and crisis, with special focus in the work on resilience on origin and transit countries of migrants and refugees.⁹⁰

Border security seems to have spread throughout member States of the EU with attendant challenges – from the indefinite containment in what is called ‘insure and undignified’ camps in Greece⁹¹ and Hungarian fence being erected towards its border with Serbia⁹² – to defacto push backs of migrants towards the hell of Libya from increasing perilous routes across the Sahara to the avoidable man drownings in the Mediterranean.⁹³ Bulgaria followed in the same direction to set-up wall on the border with Turkey;⁹⁴ and even Spain is clamouring for insurmountable walls at the borders of the country’s North African enclaves of Ceuta and Melilla, where existing tall fencing, military technology, and manpower have for years been contributing to the chaos.⁹⁵

A common view and largely shared feature of contemporary migration policies is their restrictive nature. More recently, migration has prevalently and increasingly been understood, in security terms, as a problem and many countries see it as a necessary duty to protect this threat. In this context, irregular migration is perceived as a central phenomenon reflecting the porosity of borders and calling for greater surveillance. Controlling immigration has consequently become an important field of policy in which several evolutions have taken place in recent years.⁹⁶ It is the common practices of the EU and its member States, and of other States in the ‘global north’ that engage in externalised migration control. These States have

⁸⁹ J. Esteve, *Migration Crisis in the EU: Developing a Framework for Analysis of National Security and Defence Strategies*, (2018) *Comparative Migration Studies*, Vol. 6, 28.

⁹⁰ See R. Anholt and G. Smatti, *Under the Guise of Resilience: The EU Approach to Migration and Forced Displacement in Jordan and Lebanon*, (2020) *Contemporary Security Policy*, Vol. 41, Issue 2, 311-335.

⁹¹ See R. Anderson and D. Keen, *The West’s Obsession with Border Security Is Breeding Instability* (2019) *Foreign Policy* at <https://foreignpolicy.com/2019/11/16/border-security-european-union-instability-illegal-immigration/>

⁹² Guardian, National Readership Survey, 21 August 2015 available at <http://advertising.theguardian.com/national-readership-survey/>

⁹³ R. Anderson and D. Keen, *supra*, note 91.

⁹⁴ Guardian, National Readership Survey

⁹⁵ R. Anderson and D. Keen, *supra*, note 91.

⁹⁶ See A. Pecoud and P. Guchteneire, *International Migration, Border Controls and Human Rights: Assessing the Relevance of a Right to Mobility* (2006) *Journal of Borderlands Studies*, Vol. 21 No 1, 69-86.

long-standing modes of sharing restrictive policies and practices, many of which are custom built to evade accountability.⁹⁷

The paper in this perspective, puts forward that the second radical strategy adopted by the EU to tackle migration flows into Europe is through tighten border security within Europe, which is expected to reducing migration from the South. But, radical border security in Europe has human rights implication as it can expose the migrants to human trafficking in different form and manifestation (e.g., forced labour, sex trafficking, removal of organ, domestic servitude, illegal adoption, and servile marriage) contrary to Article 3 UN Protocol on Trafficking in Person.⁹⁸

Tighten border security is just as prone as the most negative consequences of immigration that take place when it is unregulated that is when it is illegal or irregular. Human smuggling, the sexual abuse of women, economic exploitation, and injury or death are major ways in which immigrants suffer when they must resort to illegal means of entrance due to tighten border security amidst devastating conflict and humanitarian crises in their home countries.⁹⁹ Because they are living in the country of destination illegally, undocumented immigrants are often outside of the protection of the law. This means that they are susceptible to abuse by criminals, unscrupulous employers, and others who recognise their vulnerability.¹⁰⁰ Also, in Europe the detention of migrants (at different level in each country) has become a frequent – this is usually arbitrary and disproportionate – response to violation of immigration Law. Detention is mostly used where migrants enter any of the EU State illegally or overstays their leave. Although migrants (in this instance asylum-seekers, children, victims of trafficking, and Stateless persons) are recognised as vulnerable groups under international Law, and entitled to special protection, many are nonetheless detained, in violation of their human rights.¹⁰¹

⁹⁷ See C. Costello and I. Mann, *Border Justice: Migration and Accountability for Human Rights Violation (2020) German Law Journal, Vol. 21, Special Issue 3, 311-334.*

⁹⁸ *The United Nations Convention against Transnational organised Crime and the Protocols*, Adopted by the UN General Assembly on 15 November 2000.

⁹⁹ J. Valadez, *Is Immigration a Human Right?* In R. Pierik & W. Werner (Eds.) *Cosmopolitanism in Context: Perspectives from International Law and Political Theory* (Cambridge: Cambridge University Press, 2010) 221-248.

¹⁰⁰ *Ibid.*

¹⁰¹ See S. Grant, *Immigration Detention: Some Issues of Inequality*, (2011) *The Equal Rights Review*, Vol. 7, 69-82.

Research suggests that connections exist between migration and criminal forms of exploitation such as human trafficking, forced labour, and modern slavery.¹⁰² As at 2019, there are 258 Million migrants globally and within this, an unknown number are also part of the estimated 40 million people living in modern slavery. However, it is not known how many of the world estimated 40 million victims of modern slavery are also migrants.¹⁰³ One of the documented cases shows that migrants on a journey to Western Europe, who were mostly from war-torn Afghanistan and Pakistan, were returned to Serbia after being arrested in Hungary, complained about alleged violence from Hungarian police officers.¹⁰⁴ The Global Estimates of Modern Slavery confirm women and girls are disproportionately affected by modern slavery, accounting for 28.7 million, or 71 per cent of the overall total. More precisely, women and girls represent 99 per cent of victims of forced labour in the commercial sex industry and 58 per cent in other sectors, 40 per cent of victims of forced labour imposed by state authorities, and 84 per cent of victims of forced marriages.¹⁰⁵

Available statistics from EU Commission suggest that the top five non-EU countries of citizenship of registered human trafficking victims in 2015-2016 were Nigeria (2094), Albania (1397), Vietnam (1099), China (739) and Eritrea (287).¹⁰⁶ A breakdown of the statistics for Nigeria for example, show that around three-quarters (74%) of the registered victims of Nigerian citizenship were trafficked for sexual exploitation. Less than one in twenty (4%) were trafficked for labour exploitation. Nearly one quarter (23%) were trafficked for ‘other’ forms of exploitation.¹⁰⁷ Nearly half (1012 out of 2084) of the victims with Nigerian citizenship were registered as victims in Italy; and nearly one quarter (500 out of 2084) were registered as victims in the United Kingdom.¹⁰⁸ The victims were overwhelmingly female (1483 females and 66 males). The top five Member States for registered victims in the period 2015-2016 are: the Netherlands (72), the United Kingdom (54), Cyprus (53), Hungary (51), and Austria (44). When the focus is on absolute numbers, the top five are the United Kingdom (7071),

¹⁰² See F. David, K. Bryant, and J. Larsen, *Migrants and their Vulnerability to Human Trafficking, Modern Slavery, and Forced Labour* (International Organisation for Migration, 2019). Modern slavery, while not defined in law, serves as an umbrella term that emphasizes the commonalities between human trafficking, forced labour and slavery. Essentially, these are all situations of exploitation in which a person cannot refuse or leave an exploitative situation due to threats, violence, coercion, deception or abuse of power. Ibid.

¹⁰³ J. Valadez, *supra*, note 99.

¹⁰⁴ Ibid

¹⁰⁵ UNDOC, ‘*Global Report on Trafficking in Persons 2016*’, (UN Office on Drugs and Crime 2016).

¹⁰⁶ European Commission, *Data Collection on Trafficking in Human Beings in the EU* (Migration and Home Affairs, 2018).

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

Netherlands (2442), Italy (1660), Romania (1636) and France (1516).¹⁰⁹ This means that, while the Netherlands and the United Kingdom are in the top five in both proportional and absolute measures, the other three countries in the top five for proportions are Bulgaria, Cyprus, and Hungary, while for absolute numbers these are Italy, Romania, and France.¹¹⁰

It is incomprehensible that human trafficking should be taking place in the 21st century (no wonder it is termed ‘modern day slavery’); even, in industrialised countries like Europe despite certain domesticated legislation such as the Brussels Declaration on Preventing and Combating in Human Beings adopted by the European Union which aimed to fight human trafficking in Europe¹¹¹ The victims are deprived of the most fundamental human rights, susceptible and subjected to all kinds of violence. Victims are meant to toil under horrific conditions in construction sites, work in fields and brothels.¹¹² Africa and Middle East origins are trafficked larger in scale and through sophisticated forms.¹¹³ Significant number of such migrated people fall victim of trafficking in migration process. This has been exacerbated by tighten border security in Europe, and economic problems and poverty make them easy for target.

Section 5: The Role of the State/EU on Law and Development Challenges in Europe

In consideration of the role of the State/EU and Law and development in addressing the issues of poverty and migration within the industrialised countries of Europe; the paper argues that there is the likelihood poverty and human right issues will increase in Europe in the near-future, if the State/EU fails to play their role, by changing their policy direction and repositioning themselves by improving their Law and development stance.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ See F. Laczko, Data and Research on Human Trafficking, (2005) *International Migration Vol.43, Issue 1-2, 5-16*.

¹¹² LCHT, Human Trafficking: A Human Rights Violation, available at <https://combathumantrafficking.org/2018/12/human-trafficking-human-rights-violation/> (15/11/2020)

¹¹³ See E. Silcock, Political Economies of the Middle East and North Africa by R. Springborg, Cambridge, Polity Press. (2020) *British Journal of Middle Eastern Studies, Vol.47 Issue 4, 673-675* (book review).

The discussion so far suggests that the State/ EU has not live up to expectation in their role in confronting immigration challenges due to the influx of migration from Africa and Middle East to Europe, with the implications of poverty on the non-EU citizens (immigrants) and human rights violations against irregular migrants.¹¹⁴ The 2018 statistics show that one hundred eighteen million people (23.5 percent) of the EU-28 population were at risk of poverty or social exclusion, with 43 million of those not able to afford a quality meal every second day. An average of 9.8 percent of people in the EU lives below the poverty line.¹¹⁵ Among this, 39.2 percent of foreign-born residents (immigrants) are more at risk of poverty than 21.6 percent of the EU citizens (natives). The country with the lowest amount of people living below the poverty line is Austria at 4 percent, and the highest is Greece at 36 percent. In Italy, the number of foreigners at risk is particularly high at 55 percent.¹¹⁶

This reveals the enormous gap between wealthier and poorer countries and/or between natives and immigrants in Europe;¹¹⁷ thus, against the prescription of HRBA. The HRBA proposes that development has now generally been perceived as part of human rights framework as a result of robust relationship between human rights and development – from a legal point of view, human rights are the subject of binding international legal obligations¹¹⁸ and their relevance to development can be understood in the light of this.¹¹⁹ The HRBA centres on the most marginalised, excluded or discriminated against, which necessitates an understanding of power imbalances among other things, to ensure that interventions reach the most marginalised segments of the population.¹²⁰ However, this is not the case; the EU countries have neglected and excluded the foreign-born residents (immigrants) who are more at risk of poverty and material deprivation. The justification for HRBA is that the theory in a broad conception focuses on a broader class of human rights and takes account of poverty, hunger, and starvation. This draws attention to Sen’s capability framework interventions in the debates about human

¹¹⁴ The key difference between migrants and immigrants is that an immigrant always begins the journey as a migrant, but a migrant does not always end the journey as an immigrant.

¹¹⁵ See L. Solano-Flórez, *supra*, note 2.

¹¹⁶ *Ibid.*

¹¹⁷ V. Gauri and S. Gloppen, *supra*, note 19.

¹¹⁸ For example, Universal Declaration of Human Rights (1944), Articles 1-2 provide for protecting human dignity, equality and non-discrimination and Article 13-14 provide for freedom of movement and residence; and Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment.

¹¹⁹ S. McInerney-Lankford, *supra*, note 20.

¹²⁰ UNFPA, *The Human Rights-Based Approach*, *supra*, note 21.

rights that suggest the defence of the validity of the idea of human rights in the context of poverty, hunger, and starvation as the rights to valuable capabilities.¹²¹

The two radical policy strategies (increased development assistance and tighten border security) adopted by the EU to address the migration challenges in Europe seem not to have yielded the right fruits. While the Europe’s development-assistance programmes have shifted European aid away from poverty alleviation to the political expediency of curbing migration;¹²² the stronger border security has exacerbated human rights violations in migration process to and within the EU.¹²³ Since over the last decades, globalisation and a growing concern over security issues, including transnational crime, incessant detentions, and terrorism, has shaped migration policies and priorities of the States. In recent years in Europe, essentially since 2015, human rights and transnational crimes, such as trafficking in persons and the smuggling of migrants, have been increasingly defined as border security issues.¹²⁴ And for the EU, resilience-building is primarily a refugee containment strategy that could jeopardise the stability of refugee-hosting States.¹²⁵ This is notwithstanding the fact that the EU member States have made long-term legal commitments under international human rights and refugee Law, most recently reaffirmed by member States in UN General Assembly Resolution 69/167 of December 2014, to protect and promote the human rights of all migrants, irrespective of their status. As signatories to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, these States have specific responsibilities to provide international protection for people fleeing ‘persecution or serious harm’.¹²⁶ The Convention obliges States to grant refugees’ rights to work, education, housing and the judicial system, and protects them from punishment for entering a country illegally. The principle of non-refoulement outlined in the Convention is a norm of customary international Law and therefore binding on all States irrespective of whether they are signatories to the Convention. Migrants who do not fall within the definition outlined in the Convention are protected under the broader international human rights framework.¹²⁷

¹²¹ See A. Sen, Human Rights and Capabilities, (2005) Journal of Human Development, Vol. 6, Issue 2, 151-166.

¹²² C. Ries and S. Culbertson, supra, note 58.

¹²³ See R. Miller and S. Baumeister, Managing Migration: Is border control fundamental to anti-Trafficking and anti-Smuggling Interventions? (2013) Anti-Trafficking Review, No. 2, 15-32.

¹²⁴ See Y. Shin, A Transnational Human Rights Approach to Human Trafficking: Empowering the Powerless (Brill, Nijhoff, 2019).

¹²⁵ See R. Anholt and G. Sinatti, Under the guise of resilience: The EU approach to migration and forced displacement in Jordan and Lebanon (2020) Contemporary Security Policy, Vol. 41, Issue2, 311-335.

¹²⁶ V. Metcalfe-Hough, supra, note 85.

¹²⁷ Ibid.

Examination of the various immigration policies in most EU countries, shows that the policies are aggressive to immigrants from developing countries. For example, the immigration policies in the UK implemented by the conservative government between 2015-2019, were aimed at reducing the number of immigrants by all means possible.¹²⁸ The immigration policy under Theresa May’s tenure might be seen as the most harsh and draconian in Britain’s history and among the EU countries. No administration has focused so much time and effort on an anti-migration policy, particularly against immigrants from the poor developing countries.¹²⁹ The draconian and uncompromising nature of the policy is that – it is one that is failed by all counts at that. To this effect, countless restrictive measures was placed on almost every migration stream since 2010, when the coalition government set itself a flawed net migration target in the UK. Immigration policy that was driven by a conservative manifesto pledge aimed to reduce annual immigration from hundreds of thousands of people to tens of thousands.¹³⁰ Behind the changes to the immigration rules has been an overarching policy to create a hostile environment. The public is now seeing the harsh and inhumane implications of this policy- the most notable being the Windrush generation, who helped to rebuild post-war Britain, being denied their rights.¹³¹ Detention of migrants are common at different level in EU member States. This is usually arbitrary and disproportionate response to violation of immigration Law.¹³²

Some of these migrants entered the UK and other EU countries legally and worked hard in order to reduce the poverty levels in their home countries by sending hard-earned money home.¹³³ The process of renewing their visas in order to remain legal residents is very cumbersome, the reason being to reduce the number of immigrants.¹³⁴ Poverty cannot be

¹²⁸ See A. Rain, Hostile Environment: the UK government’s draconian immigration policy explained available at <http://theconversation.com/hostile-environment-the-uk-governments-draconian-immigration-policy-explained-95460> (12/12/2019).

¹²⁹ Ibid

¹³⁰ Ibid

¹³¹ Ibid

¹³² See S. Grant, Immigration Detention: Some Issues of Inequality, (2011) *The Equal Rights Review*, Vol. 7, 69-82.

¹³³ DFID, *Moving out of Poverty: making migration work better for poor people* (Department for International Development, 2007). Also available at

http://www.sussex.ac.uk/Units/SCMR/drc/publications/other_publications/Moving_Out_of_Poverty.pdf

¹³⁴ See for example the works of TWAILERS, Anand, R. *International Law and Developing Countries: Confrontation or Cooperation*. (Dordrecht: Kluwer, 1987); Anghie, A. *Imperialism, Sovereignty and the Making of International Law*. (Cambridge University Press: Cambridge, 2004); Chimni, B. (2004). “International Institutions Today: An Imperial Global State in the Making” (2004) *15 European Journal of International Law*. 1; Rajagopal, B. *International Law from Below: Development, Social Movements and Third World Resistance*.

reduced in Europe (or even in developing countries) with a policy of this nature and it works against the rights of the immigrants. During the period of dislocation in the capitalist economic expansion in Europe, some European countries sought external expansion by force, through colonising most developing countries where, according to TWAIL scholars, they acquired extensive wealth through the ‘exploitation of third world countries’.¹³⁵ These countries are expected to reciprocate this gesture by adopting immigrating policies that favour poor developing countries, in their bid to achieve economic development. Also, the ‘no recourse to public funds’ policy on immigrants¹³⁶ and low skilled jobs offered to them create a wide-gaps between the natives in the EU and immigrants – this leads to income poverty on the immigrants. Income poverty (coupled with the current Covid-19 pandemic) has led to material deprivation, including increasing food poverty. An assessment of welfare reforms since 2010 showed that these policies affected those in the bottom income deciles the most, particularly single parents, ethnic minorities, migrants and people with disabilities.¹³⁷ A recent study on household food poverty in low-income families found that welfare and immigration policies¹³⁸ were creating hunger and other material deprivation on immigrant families.¹³⁹

Therefore, these immigration and welfare programmes are contrary to some of the major elements of HRBA, such as participation and inclusion, and non-discrimination and equality that necessitate good practices under a HRBA.¹⁴⁰ This is because immigrants are not recognised as key actors and are passive recipients of commodities and service and not empowered like the natives in Europe. Also, the immigration and welfare programmes failed to focus on the immigrants, who are the marginalised excluded groups and was not aimed to reduce disparities and empower those left behind.

(Cambridge University Press: Cambridge, 2003; and Ikejiaku, B. International Law is Western Made Global Law: the perception of third world category (2014) *African Journal of Legal Studies*, Vol. 6, Issue 2-3, 337-357). TWAILERS are scholars, mostly from developing countries who pursue international scholarship, ‘Third World Approach to International Law (TWAIL)’, in order to address the injustices against the third world due to the hijacking of international law by the Western developed countries.

¹³⁵ Ibid. See also W. Rodney, *How Europe Underdeveloped Africa* (Bogle-L’Ouverture Publication, 1972).

¹³⁶ This is an immigration condition imposed on people subject to immigration control – Section 115 Immigration and Asylum Act 1999. Available at <https://www.legislation.gov.uk/ukpga/1999/33/contents> (18/11/2020); also See A. Woolley, *Access Denied: The cost of the ‘no recourse to public funds’ policy* (2019) The Unity Project: London.

¹³⁷ See E. Dowler, S. Turner, and B. Dobson, *Poverty Bites: Food, Health and Poor Families*, (2001) Child Poverty Action Group, London.

¹³⁸ See A. Woolley, *Access Denied: The cost of the ‘no recourse to public funds’ policy* (2019) The Unity Project: London.

¹³⁹ See R. O’Connell, A. Knight, J. Brannen, *Living Hand to Mouth: Children and Food in Low-Income Families* (2019) Child Poverty Action Group, London.

¹⁴⁰ M. Broberg & H. Sano, *supra*, note 23.

5.1: *Changing policy direction from the perspective of politics around migration and repositioning EU by improving Law and development stance*

The failure of the States/EU in performing their role in addressing the issues of (international) Law and development¹⁴¹ in Europe that is the issues of *migration, poverty, and human rights* as discussed in this paper – are at the heart of the challenges beseeching Europe since 2015. The relevance of Law and development can be drawn from Perry and Hatchard argument that ‘the ideas about development which fuel contemporary interest in the Law, also seem to encourage the hope that Law could simplify development policy making, toning down its engagement with political and economic controversy’.¹⁴² Migration, poverty, and human rights are Law and development issues, essentially when exploring the conceptualisation of the concepts ‘economic development and rule of law’¹⁴³ from the viewpoints of *Goal 1, Goal 8, Goal 10, and Goal 16*,¹⁴⁴ as well as EU development policy and establish working definitions for these concepts.¹⁴⁵ Also, the link between legal and economic development is close to the core of the EU project of promoting peace through economic development and legal integration.¹⁴⁶ Furthermore, the European Union’s (EU) response to the adoption of the 2030 Agenda is featured in the Commission’s 2016 Communication *Next Steps for a Sustainable European Future: European Action for Sustainability (Next Steps for a Sustainable European Future)*.¹⁴⁷ Pursuant to the Communication, ‘the EU is fully committed to be a frontrunner in

¹⁴¹ For (International) Law and Development – See B. Ikejiaku, International Law, International Development Legal Regime & Developing Countries, *Law & Development Review* (2014) Vol. 7(1): 131-163.

¹⁴² See A. Perry, and J. Hatchard, eds. ‘*The Rule of Law as Development*’ in *contemplating complexity: Law and Development in the 21st century*, (Cavendish Publishing London, 2002).

¹⁴³ There is a relationship between the rule of law and economic development – for example See B. Ikejiaku, The Role of Law in Economic Development Process within the Context of the Islamic World: De-linking Oil and Gas Projects and Re-linking International Legal Reform (2021) *Asian Journal of International Law*, Vol. 11, issue 1 *Forthcoming*; See also B. Ikejiaku, The Role of Law and the Rule of Law in the Economic Development Process: Quest for New Directions and Approaches in International Development Law Regime (2020) *Denver Journal of International Law & Policy* Vol. 47.1, 51-71.

¹⁴⁴ Ending poverty (G.1), economic growth (G.8), migration assistance (G.10), and the rule of law (G.16).

¹⁴⁵ See M. Rabinovych, Where Economic Development Meets the Rule of Law? Promoting Sustainable Development Goals Through the European Neighbourhood Policy (2020) *Brill Open Law*, Vol.2, Issue 2, 140-174.

¹⁴⁶ V. Birchfield, J. Krige and A. Young, ‘European Integration as a Peace Project’, (2017) *British Journal of Politics and International Relations*, 19/1: 3–12.

¹⁴⁷ M. Rabinovych, *supra*, note 145.

implementing the 2030 Agenda and the SDGs’. The EU’s commitment to the 2030 Agenda is reaffirmed by the 2017 *New European Consensus on Development* that structurally mirrors the 2030 Agenda.¹⁴⁸ Both the Agenda and the EU’s implementing documents underline the role of the rule of law and of ‘effective, accountable and inclusive institutions’ in achieving sustainable development.¹⁴⁹ The HRBA subscribes for human rights standards that guide the formulation of measurable goals, targets and indicators in programming and accountability systems.¹⁵⁰

In this perspective, the State/EU is expected to play their role, by changing their policy direction from the dynamics of politics around migration and repositioning themselves by improving their Law and development stance. The EU should tackle these issues of Law and development by confronting the political discourse and change the rhetoric around migration and development. This is by implementing policies that reduce poverty on the immigrants, minimise human rights issues, especially trafficking in person on migrants, and maximise migration mutual benefits. The policy option open for Europe is not whether there will be large influx of migration, but how-to manage it in a way that is economically beneficial and socially sustainable, as well as meet international legality.¹⁵¹ Migration can have immense mutual benefits if it is appropriately governed. Host country policies governing migrants’ access to labour markets and their ease of *integration* into local communities will determine how feasible these positive migration impacts can be achieved.¹⁵² Good cases in this direction are Australia’s and Germany’s successfully tested programmes to train migrants in needed skills before they arrive, part of an approach that Centre for Global Development (CGD) has proposed called Global Skill Partnership. It is documented that migrants almost always generate net positive economic benefits to the host country at large.¹⁵³

Supporting countries development at the migrants’ country of origin in Africa and Middle East with the right intention and for the right reasons to see them attain real development, rather merely for the sole purpose of reducing or tackling migration flow to Europe.¹⁵⁴ Thus, development engagement with developing countries, particularly Africa through aid but

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ M. Broberg & H. Sano, *supra*, note 23.

¹⁵¹ F. Jaumotte, K. Koloskova, and S. Saxena, *Migrants Bring Economic Benefits for Advanced Economies* (2016) IMF Blog: Insight & Analysis on Economics and Finance.

¹⁵² M. Ahmed and K. Gough, *supra* note 57.

¹⁵³ Ibid.

¹⁵⁴ D. Avramopoulos, *How Europe can Stop African Migration*, (2018) Politico available at <https://www.politico.eu/article/europe-can-stop-african-migration-symposium-experts/> (24/11/2020).

equally through trade, investment, and other avenues, remains an essential priority for EU policymakers. However, for the effectiveness of this development assistance, there is the need to focus on supporting broad-based development and not be distorted by trifling programmes directed to deterring migration.¹⁵⁵ Development aid targeted to constrain drivers of migration to Europe is likely to neglect the development needs of the African societies – in most cases, the development aid does not reach the Africa’s youth-workforce but wasted by corrupt elites and professionals in development process. Africa’s large youthful and energetic populations are known to be hardworking, but they lack basic amenities to help them get engaged in independent work – development assistance should be channelled towards provision of essential basic amenities (e.g., electricity, running water, and roads) that will provide independent opportunities to some of the youthwork force. This is along tackling other development challenges – alleviating or eradicating remaining extreme poverty, improving health and education outcomes, dealing with conflicts and extremism, and providing economic opportunities for the rapidly growing young population.¹⁵⁶ Europe will benefit and increasing support to in economic and other development Africa is imperative, not only as European neighbour, but also to equip Africa’s future workforce with the skills and education that will maximise their contributions at home and Europe, should they decide to relocate. This will not only reduce migration but will strengthen (international) Law and development stance and equip the migrants and ultimately lead to long-term sustainable alliance and lasting development path.¹⁵⁷

5.2: Summary and conclusion

The paper examines the role of the State and Law and development in addressing the issues of migration and poverty within the industrialised countries of Europe. The central argument of the paper is that the radical strategies of increasing European assistance to poor developing countries and strong border security within the Europe may sound appealing; however, they are unlikely to reduce migration flows to Europe. While increasing development at the stage where there is still a ‘wide gap’ between the developing poor countries of Africa/Middle East and developed industrialised countries of Europe will often increases migration, at least in the

¹⁵⁵ M. Ahmed and K. Gough, *supra* note 57.

¹⁵⁶ *Ibid*

¹⁵⁷ D. Avramopoulos, *supra*, note 153.

next two-three decades, radical border security in Europe will expose the migrants to human trafficking. There is the likelihood that poverty and human right issues will increase in Europe in the near-future, if the State/EU fails to play their role, by changing their policy direction and repositioning themselves by improving their Law and development stance, in order to gain the huge mutual benefits from migration.

The paper finds that foreign aid can be a useful instrument to mitigate civil conflict that drive emigration conditional on relative secure environment for aid policies to be implemented. It is unlikely that European development assistance to Africa and Middle East will reduce migration from the South – as the policymaking strategy of targeting foreign assistance toward stemming migration is likely not going to work. Based on the empirical evidence provided in this paper, the implication is that migrants from outside the EU tend to face higher poverty rate than the EU nationals.

The paper finds that Europe approach migration crises as a security issue needing coordination and cooperation processes at more levels and with more actors. The EU adopted strong border security in order to reduce migration from the South. It is unlikely that tighten border security in Europe will significantly reduce migration; rather it will lead to violation of the human rights of migrants through arbitrary detention, human trafficking, and economic exploitation.

The paper finds that the failure of the State/EU in performing their role in addressing the issues of (international) Law and development that is the issues of migration, poverty, and development, as discussed in this paper are at the heart of the challenges confronting Europe, particularly since 2015. The State/EU needs to play their role by changing their policy direction from and repositioning themselves by improving their Law and development stance. The EU should tackle these issues of Law and development by confronting the dynamics of politics around migration and change the rhetoric around migration and development. This is by implementing policies that reduce poverty on the immigrants, minimise human rights issues, especially trafficking in person on migrants, and maximise migration mutual benefits.

The paper concludes that the EU must focus on supporting broad-based development not directed to distort migration but that will support economic and other development and equip the current energetic and future workforce of the South with skills that will ultimately lead to long-term sustainable alliance with Europe.