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THE ETHICS OF THE EU BORDER REGIME:
AN ARGUMENT FOR
CONSEQUENTIALIST COSMOPOLITANISM

A dissertation submitted to the University of Dublin
for the Degree of Doctor of Philosophy

Polycarp Ugwu

2014
Declaration

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SUMMARY

This thesis titled “The Ethics of the European Union Border regime: an argument for consequentialist cosmopolitanism” has been developed through a reflection on the experiences of Third country nationals from developing nations at the European frontiers. It is a research carried out among immigrants who tell their life stories while searching for better options in life. Some of the stories exemplify successful migration stories while some reveal the plight of immigrants in the present regime of highly restrictive borders. It has to be said that extracting these information from participants proved to be a difficult task as many of them are still vulnerable people. Their life stories provide the platform for an ethical analysis of present EU border regime.

This work is developed on the hypothesis that the current international border regime, as exemplified by the European Union, disables the ability of most Third Country Nationals to move from the global South to the global North. The barriers placed against TCNs are crystal clear in current EU migration policies.

Liberal developed nations, like the EU, ethically justify their highly restricted border regime based on the ethics of ‘particularism’ or ‘communitarianism,’ which privileges the rights of ‘members’. In this understanding, members deserve the right to craft immigration policies according to their interest, thereby allowing a selected few and turning away those they wish without any recourse to outside authority and this is deemed morally acceptable. Contrary to the ethics of particularism, cosmopolitans argue that there are moral inadequacies in the present border regime. Cosmopolitan ethics see each human being as having equal moral worth, hence open borders are seen as instrumental to global equality and justice. Consequentialist cosmopolitanism
suggests that the lifting of immigration barriers placed against TCNs from the
developing world would certainly maximize their life options. Findings of fieldwork
carried out amongst migrants and would-be migrants from South Eastern Nigeria
demonstrate the lived implications of EU border restrictions in people’s lives. In the
present EU border regime, people encounter numerous difficulties in their bid to
migrate. These difficulties appear obvious while they make visa applications, cross
the borders, and live as immigrants in the European Union States.

While making visa applications, crossing the EU borders or being resident their
freedom of choice, wellbeing and their human rights are to some extent not enhanced.
Overall, many people are prevented from bettering their lives because of the
immigration restrictions used to limit their entry into Europe in the present regime of
highly restrictive immigration policies. While this is the case there is the recognition
that the EU states deserve to preserve their rights to self-determination and at the
same time protect the interests of members and their societal projects.

Against this background, reconciling particularists’ commitments with cosmopolitan
concerns for global justice is seen as a necessity. In an ideal world, an “unqualified”
prima facie right to immigration would be appropriate, but in the real world,
‘members’ of the bounded worlds do deserve some rights to determine how entry is to
be exercised. However, the right to control immigration should not entail a
contradiction of liberal ideals. The ethical solution to our present dilemma concerning
borders is therefore a consequentialist cosmopolitan conception of morality which
provides a middle position as it takes into consideration the potential life options of
migrants, and at the same time, does not disregard the concerns of ‘members’. In a
consequentialist cosmopolitan world borders can be moderately open.
DEDICATION

In loving memory of my late grandmother
Beatrice Onyebuchukwu.
ACKNOWLEDGEMENTS

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I thank my parents Romanus and Evelyn and all my brothers and sisters for all their encouragement during these years of studies. I give thanks to my friends and all well-wishers who have eagerly anticipated the completion of my research project. I wholeheartedly recognise the efforts of all those who have helped me during my field work, especially those participants whose openness helped create the platform for my ethical analysis of borders.

I deeply appreciate the support given to me by Pauline and Seamus Ferguson’s family, also Pat and Norah Griffins. I remember Maureen Colgan, Michael Scahill, and Maureen Fitzgerald. I am equally indebted to Tina, Clara and Sean Caslin for their care. I am thankful to all others whose names are not mentioned here but have shown me solidarity and support during my period of studies.
Table of Contents

Declaration i
Summary ii
Dedication iv
Acknowledgements v
Table of Contents vi
Map of Nigeria xii
Map of South East Nigeria xiii
Acronyms xiv
Introduction 1

CHAPTER 1: RESTRICTIVE MIGRATION REGIMES IN THE CONTEMPORARY WORLD: THE CASE OF THE EUROPEAN UNION STATES

Introduction 13
1.1 Trends in contemporary international border arrangement 15
   1.1.1 History and developments 15
   1.1.2 International borders in the contemporary world 18
1.2 Europe: The Schengen zone 22
   1.2.1 Recent developments in the EU border regimes 22
   1.2.2 Restrictive immigration policy for Third Country Nationals 27
1.3 Outside Schengen: Republic of Ireland 35
   1.3.1 Irish Republic: Historical development of Irish immigration policies 36
   1.3.2 Present practice 39

Conclusion 46
CHAPTER 2: ETHICAL JUSTIFICATION OF 'CLOSED' BORDERS

Introduction

2.1 The communitarian defence of borders

2.1.1 Welfare collapse and priority for compatriots

2.1.2 Economic stability needs closed border

2.1.3 Public security and the protection of democratic values

2.1.4 Closed borders protect cultural identity

2.2 Should borders be closed?

Possible objections to the arguments supporting closed border policies

2.2.1 Will immigration threaten welfare and restrict putative special responsibilities?

2.2.2 Will a more open immigration be a threat to national economies?

2.2.3 Will closed borders ensure security?

2.2.4 Will migration of people be destructive of community culture?

Conclusion

CHAPTER 3: MAKING A CASE FOR MORE OPEN BORDERS: FROM COSMOPOLITAN ARGUMENTS TO CONSEQUENTIALIST COMOPOLITANISM.

Introduction

3.1. Understanding cosmopolitanism: Historical development of cosmopolitan thinking

3.1.1 The essence of cosmopolitanism in contemporary understanding

3.2 Cosmopolitan arguments for open borders

3.2.1. Rawlsian Liberalism and the case for open borders

3.2.2 A liberal egalitarian argument for open borders

3.2.3 Free movement as a ‘right’ in a cosmopolitan world order
3.2.4 Open borders as a means of facilitating global distributive justice in a cosmopolitan world order.

3.3 Moral legitimacy of border control arguments: The merits of communitarian arguments

3.3.1 Crucial arguments for the existence of borders

3.4 Balancing the conflicting goals of liberal cosmopolitan arguments with communitarian concerns: A consequentialist cosmopolitan argument.

3.4.1 Consequentialism as an ethical theory

3.4.2 Consequentialist cosmopolitanism

3.4.3 Consequentialist cosmopolitan arguments regarding border arrangements

Conclusion

CHAPTER 4: FIELD RESEARCH PART ONE: THE IMPACT OF THE EU’S CLOSED MIGRATION REGIMES ON THE ‘IGBOS’ OF SOUTH EASTERN NIGERIA

Introduction

4.1 Placing migration in the context of people from South Eastern Nigeria

4.2.1 Case study of legal migration: From visa application to border crossing

4.2.2 EU border implications: Case studies of irregular migration

4.2.2.1 Chinedu: Taking ‘the boat of death’

4.2.2.2 Ifeanyi and Dan: Overstayed their short-stay Schengen visas

4.2.2.3 Chima’s failures in securing a visa made him overstay when he got it

4.2.2.4 Ikenna’s Hannover experience

4.2.2.5 Chikwe: Reaching Europe through South Korea

4.2.2.6 The case of ‘Chubi’: living underground in Spain
CHAPTER 5: FIELD RESEARCH PART TWO: MIGRANTS FROM SOUTH EASTERN NIGERIA LIVING IN IRELAND: THEIR EXPERIENCES OF CLOSED BORDERS

Introduction 150

5.1. Living and working in Ireland: Chime, Eme and Obi 152
   5.1.1. Chime 152
   5.1.2. Eme 154
   5.1.3 Obi 157

5.2 Women living in Ireland as immigrants with their children: Amara, Phili and Ifii 160
   5.2.1 Amara 161
   5.2.2 Phili 163
   5.2.3 Ifii 165

5.3 Living in Ireland as refugees: Paul and Vin 166
   5.3.1 Paul 167
   5.3.2 Vin 168

5.4 Undocumented migrants and asylum seekers: Uchenna, Chiaka and Nwanna 174
   5.4.1 Uchenna: a failed asylum seeker 174
   5.4.2 Chiaka: An undocumented immigrant 176
   5.4.3 Nwanna: Seeking asylum in Ireland 178

5.5. Ike: Undocumented migration and marriage of convenience 182

5.6 Working with migrants: Maria, Ife and Dozie 184
   5.6.1 Maria 184
   5.6.2 Dozie 185
   5.6.3 Ife 186
CHAPTER 6: ANALYSIS OF FIELD WORK: MIGRATION EXPERIENCES AND 
THE ETHICS OF BORDER CONTROLS

Introduction

6.1.1 The EU border regime and freedom of choice

Restricted 'Freedom of choice' prior to entry: the interviewee's experiences

Restricted 'Freedom of choice'- after crossing the borders: the interviewee's experiences

6.1.2 The EU border regime and human well-being.

6.1.3 The EU border regime and Human Rights violations

Concluding remarks on the current border regime and consequentialist cosmopolitan analysis

6.2 Analysing the fieldwork by consequentialist cosmopolitan perspectives: The legitimate concerns of states

6.2.1. The right to border checks: The principle self-determination

6.2.2 6.2.3. Protection of citizens and the social project

6.3 Practical recommendations for moderately open borders in a consequentialist cosmopolitan world

6.3.1 Abolishing the idea of 'negative and positive visa lists' and 'airport transit visas'

6.3.2 Creating a fairer visa issuing system

6.3.3 Reducing the 'discretionary authority' and abolishing the idea of 'permission to land'

6.3.4 Opening up channels for legal migration (both skilled and unskilled)

6.3.5 Integration: Facilitating pathways to long stays or 'citizenship'
6.3.6 Broadening the concept of 'Refugees' 234

6.3.7 Amnesties and Earned regularizations for those already trapped and undocumented 235

FINAL CONCLUSION 238

Bibliography 241

Appendix 257
<table>
<thead>
<tr>
<th>ACRONYMS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMESA</td>
<td>Common Market for Eastern and Southern Africa</td>
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<tr>
<td>EAC</td>
<td>East African Community</td>
</tr>
<tr>
<td>EFTA</td>
<td>European Free Trade Association (Liechtenstein, Iceland, Norway and Switzerland)</td>
</tr>
<tr>
<td>ECOWAS</td>
<td>Economic Community of West Africa</td>
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<td>ERS</td>
<td>Earned Regularization Scheme</td>
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<tr>
<td>EEA</td>
<td>European Economic Area</td>
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<td>EC</td>
<td>European Community</td>
</tr>
<tr>
<td>EU-2</td>
<td>Citizens of Bulgaria and Romania</td>
</tr>
<tr>
<td>EU-8</td>
<td>Citizens of Poland, Hungary, the Czech Republic, Slovenia, Slovakia, Estonia, Lithuania, and Latvia</td>
</tr>
<tr>
<td>EURODAC</td>
<td>European Dactyloscopy</td>
</tr>
<tr>
<td>FRONTEX</td>
<td>Frontières extérieures</td>
</tr>
<tr>
<td>FÁS</td>
<td>Foras Áiseanna Saothair</td>
</tr>
<tr>
<td>GATT</td>
<td>General Agreements on Tariff's and Trade</td>
</tr>
<tr>
<td>JHA</td>
<td>Justice and home Affairs</td>
</tr>
<tr>
<td>ICI</td>
<td>Immigrant Council of Ireland</td>
</tr>
<tr>
<td>MOJ</td>
<td>Minister of Justice</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>ORAC</td>
<td>Office of the Refugee Application Commissioner</td>
</tr>
<tr>
<td>SIS</td>
<td>Schengen Information System</td>
</tr>
<tr>
<td>TCN</td>
<td>Third Country Nationals</td>
</tr>
<tr>
<td>VEC</td>
<td>Vocational Education Committees</td>
</tr>
<tr>
<td>VIS</td>
<td>Visa Information System</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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</tbody>
</table>
INTRODUCTION

We frequently hear stories of migrants’ ordeals around European coasts and we know that many migrants from the global South take risky journeys to try to enter Europe. Beyond the dramatic news stories from Europe’s Mediterranean border, it is also the case that many migrants from the global South are refused entry at European air and sea ports, those who enter to claim asylum are frequently detained in limbo for lengthy periods and even those who settle legally inside Europe may have long waits for naturalisation and difficulties with integration. All of these stories draw our attention to the issue of the ethics of the current border regime of the EU and its member states.

In this thesis I explore and criticise the ethical justification offered for the current highly restrictive border policies of the EU, and one of its member states (Ireland) in particular, and by drawing our attention to the human experiences of a selected group of migrants from South East Nigeria, I argue for a reformed EU border policy premised on an alternative ethics of consequentialist cosmopolitanism.

The key research questions which guide this thesis are therefore:

- What is the normative framework which underpins the current EU border regime and is it ethically sound?
- If that ethical justification is flawed, what alternative ethics should underpin EU border policies?
- What do the lived experiences of migrants from the global South reveal about how far or near the current EU border regime is to being ethically justifiable?
If these experiences suggest that the current regime is far from ethically justifiable, what reforms are necessary to create an ethically just border regime?

To answer these questions, this thesis engages with the ethical debates about whether borders should remain highly restricted, as would be argued by communitarian ethicists, or should be far more open, as cosmopolitan ethicists would contend. In comparing the strengths and weaknesses of these opposing poles of ethical debate, I will consider whether an alternative position between the poles (consequentialist cosmopolitanism) could offer an ethically fair border regime, by seeking to take into account the concerns of both migrants and those who are ‘native’ to the countries of immigration. I will suggest that consequentialist cosmopolitan principles should inform EU border policies as this framework distinguishes itself from the other normative theories under review as it suggests that while freedom of choice is seen as the metric of well-being for all individuals it does not ignore the legitimate need to preserve the self-determination of states or the right to preserve existing social goods. Therefore, I will argue that consequentialist cosmopolitanism offers reconciliation between communitarian and cosmopolitan arguments by showing that there are simultaneously good reasons to have border restrictions but at the same time moderately open the borders.

Fieldwork carried out with migrants and would-be migrants from Nigeria and in Ireland, will be used to assess the impact of EU border restrictions on the lives of migrants and to assess how far the current regime approximates to the proposed ethical standard. On the basis of this analysis, some policy reforms that are needed to meet this alternative ethical criterion – and establish moderately open borders for a consequentialist cosmopolitan world – will be recommended.
‘Closed Borders’¹ and Ethical Debates (Chapters 1-3)

The first chapter looks at the hallmarks of the current global migration regime and how a highly restrictive border regime has evolved in recent years. It shows how in the present international border regime, especially of the EU (including Ireland), various laws and tools are used to restrict the movement of people particularly from the global South to the global North. This is evident in the way immigration policies of these nations are crafted, and it further resonates in the way these policies are constantly revised so as to restrict more people from entry, the practices of border control and the on-going surveillance of migrants once they have crossed the borders.

The second chapter looks at the ethical principles that underpin this highly restrictive border regime. It shows how developed nations ethically justify strict immigration policies based on the ethics of ‘particularism.’ Particularism is an umbrella term for communitarian, nationalist and similar arguments which posit that the existence of borders is crucial for liberal states on the grounds that immigration restriction serves as a means of protecting the interests of those who are “members” in bounded communities. The key arguments here revolve around the existence of special obligations to 'members' and the protection of the values of the liberal democratic states; namely welfare, economy, democracy, civil rights and culture. Though these arguments are offered in defence of border exclusions, there are serious questions that arise concerning whether some of these arguments hold water in empirical or ethical terms. As chapter two will show, some of these arguments are not quite as incontrovertible as their proponents assume because there are obvious objections that can be raised against the exclusionary defence of borders.

¹ As will be explained in chapter 1, the current EU border regime in relation to migrants from the global South is highly restrictive. My occasional use of the term ‘closed’ is not meant to imply complete closure but is to be understood as shorthand for expressing the high degree of restriction experienced by Southern migrants.
The third chapter examines these objections in the light of cosmopolitan ethics. In essence, cosmopolitans see each human being as having equal moral worth, since "all human beings are born free and equal in dignity and right." Cosmopolitans perceive that there are moral inadequacies in the present border regime which is highly selective and they make a case for open borders on a number of grounds, arguing that open borders would be consistent with liberalism as well as instrumentally necessary for global justice and the enhancement of human development in the global South. For example, based on a Rawlsian conception of justice, where a just liberal society will be constructed under a veil of ignorance, cosmopolitans argue for open borders on the ground of freedom, equality and social justice.

Considering the merits of particularists’ arguments, this chapter goes further by suggesting a middle position between the poles of complete border openness and highly restrictive border regime. It proposes a ‘consequentialist cosmopolitan’ approach to borders as a middle position. Consequentialist cosmopolitanism provides a balance between the extreme versions of communitarianism and cosmopolitanism. It is a position that sees open immigration as instrumental for global justice, but does not presume an ‘unqualified’ right to immigration. This thesis applies the theory of consequentialist cosmopolitanism on EU border debates, a theory that has been developed by Raffaele Marchetti.

Though migrants should have a cosmopolitan right to choose, their rights to freedom of movement have to be balanced against a prima facie equally valid right of original residents to preserve their societal political project. Consequentialist cosmopolitanism as advanced by Raffaele Marchetti is an agent-relative theory of the good dependent on the “unique

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2 Universal Declaration of Human Rights Article 1948, Article 1.
capability” of agents to choose their preferred life options. It adopts “freedom of choice as a metric of well-being.” This means that the ability of each individual to choose by themselves their life options and places of residence guides us in identifying what well-being is for them. Therefore, I will suggest that consequentialist cosmopolitanism should be the preferred ethical basis for the EU border regime and as such it becomes the framework through which the present EU border regime will be examined in relation to those who are subject to restrictions at the EU borders.

Fieldwork (Chapters 4 and 5)

Against this background of the contemporary ethical debate about borders, the fourth and fifth chapters convey the findings of fieldwork which was carried out amongst migrants and would-be migrants. The purpose of this fieldwork was to demonstrate the lived implications of border restrictions for a selected group of migrants from the global South, using their experiences to reveal and analyse the human consequences of the EU’s highly restricted border regime and so providing the grounds to reassess the ethical debates in the light of their experiences using a consequentialist cosmopolitan approach.

All the interviewees were Igbo people of Nigeria, who are essentially known to have been, and to remain, migrants throughout their history. The fourth chapter makes a case study of the impact of the EU migration regime on those wishing to migrate from South Eastern Nigeria and some who have experienced migration in the EU. Thereafter, the fifth chapter presents the second part of the fieldwork which focused on migrants from this region of Nigeria who are now resident in Ireland.

The research work provides a textual description of how people experience the present EU regime of highly restricted borders, both in their homeland and in the developed nations

\[\text{Raffaele Marchetti, Global Democracy: For and against (London: Routledge, 2008), 40}\]
where they are resident. The thesis analyses the “human experiences” in the midst of the existent tight border controls, in order to develop an ethical analysis of the current border regime.

Fieldwork Methodology

The fieldwork element of this research project can best be characterized as qualitative research work using semi-structured interviews. There were 35 participants in Nigeria and 30 participants in Ireland.

I have chosen Nigeria as a field site because it is representative of a developing nation in the global South but also as I was born in Nigeria, I am interested in the migration stories, of the Igbo people to whom I belong.

My personal knowledge of and contacts in this region of South East Nigeria, enabled fieldwork access and the building of trust with interviewees. I have chosen Ireland as a particular case within the EU because although outside the Schengen Agreement, in practice the state has a lot in common with EU policies concerning immigration of people from developing nations in the global South. Moreover, because Ireland does not share borders with other EU countries or any of the sending countries in the developing world, most migrants found in Ireland have crossed other European borders before arriving in Ireland. It therefore makes sense to consider people’s migration journeys to Ireland in the wider European border context. A further reason for focusing on interviewees in Ireland is that a large number of immigrants have come into Ireland in the last 15 years and of these a high percentage have come from Nigeria. Among these Nigerians, migrants from South Eastern Nigeria have a large presence and migration is something that is often associated with them.

Moreover, I have lived in Ireland prior to and throughout this research work, and I have access to immigrants who belong to Nigerian communities in the cities of Ireland.
The participants were chosen through 'snowball sampling' with only a few of the participants known to the researcher at the outset. There is always a danger when 'snowballing sampling' is used that interviewees will be homogenous or from the same social class or network. However, this did not prove to be a problem. The participants were fairly distributed as they came from different parts of the Igbo land and they represented different walks of life.

The questions in the interview were designed to fully, accurately and objectively elicit people's stories and experiences, covering the reasons for their migration (or desire to migrate), their experiences during migration and the impact of the highly restricted border regime on their movement and indeed settlement (when this was achieved). (See Appendix 1 for the interview schedule).

In this research, the semi-structured interview method was chosen as this allowed me to get further into the story behind the participants' experiences or views. This approach gave opportunities to pursue in-depth information around the given responses, and also to probe further into given answers by raising more possible questions. These interviews were informal and conversational, thereby allowing the interviewer and the interviewee to go with the flow of the conversation. With this emphasis on capturing people's stories, the research can be described as ethnographical in approach as in the book "'Illegal' Traveller" by Shahram Khosravi.7

Any social research must be carried out in line with ethical research principles, but particular care is needed when researching marginalised or vulnerable populations. Research carried out

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7 Shahram Khosravi, *'Illegal' Traveller: An Auto-ethnography of Borders* (New York: Palgrave Macmillan, 2010). Although it should be noted that Khosravi's book is auto-ethnographical with the interjection of his personal story, this research has been "depersonalized" from my point of view, since I have not included my own migratory story.
on migration and borders is bound to encounter vulnerable people, who may, for example, be living in a country with irregular migration status. As such, “extreme sensitivity”\(^8\) was applied while conducting this research regardless of the participants’ status, as there can be complexities in researching private lives and placing results in the public arena. This has the potential to raise ethical issues, which may not be easily solved.\(^9\) Ethical concerns for qualitative researchers often revolve around four major issues: “confidentiality and privacy”, “the assessment of benefit versus harm”, “informed consent”, and “duality of roles.”\(^10\)

Considering these vital issues, “confidentiality and privacy” were guaranteed as participants were made anonymous; pseudonyms have been used considering the sensitivity of the research topic. Secondly, considering the “assessment of benefit versus harm”, which implies that researchers have the obligation of “maximizing benefits” and “minimizing harm,” and not to embark on a project that brings harm to already vulnerable people, I worked with an awareness that the information given concerning other peoples’ lives can automatically make the researcher a “bearer of secrets.”\(^11\) If care is not taken, personal information given in interviews can prove to be harmful to participants when they fall into the hands of third parties which could eventually be used negatively.

I therefore took care to reassure participants of the privacy surrounding their responses and also to discuss with them the possible benefits of their participation, especially how the exposition of their life stories can help create awareness concerning present practice at the borders.

Thirdly, on the issue of “informed consent”, information was given to the participants concerning the purpose of the research, procedures and their alternatives. The benefits and

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\(^8\) Liempt and Bilger, *The Ethics of Migration Research*, 1.
\(^10\) *Ibid*.
potential risks were re-emphasized.\textsuperscript{12} Participants were given the chance to make informed decisions and were given adequate explanation concerning the research project so as to consciously decide for or against participation. In order not to create unnecessary anxiety among participants, interviews were carried out in a relaxed and well-chosen environment that was devoid of onlookers.

Concerning the possible complications arising from a ‘duality of roles’\textsuperscript{13} a cordial relationship was established with the participants without losing focus on the primary research project. Efforts were made to cope properly with the subjective and objective elements of the research. Since I come from the ethnic group that is being researched, I made efforts to find a neutral balance, however I do consider that there was a degree of closeness between me and the participants and this helped participants to be confident, enabling “a carefully established trust relation” to develop during the course of the research.\textsuperscript{14}

**Ethical Analysis and Recommendations for the Future (Chapter 6)**

The research fieldwork sets the stage for an ethical analysis of the highly restrictive border regimes of the EU and its member states, like Ireland. In chapter six, the field work is analysed, and the analysis lays bare that in the present EU regime of restrictive borders, it is evident that many “Third Country Nationals”\textsuperscript{15} (TCNs) do not have freedom of choice when it comes to EU border crossing, their ‘unique capability to choose’ is so much inhibited. It is shown in the interviews that their freedom of choice is further constrained by border regime

\textsuperscript{12} Ibid., 12.
\textsuperscript{13} Duality of roles “refers to the relationship between the researcher and respondents and regards a ‘balancing of power’ and the position respondents are given in the course of a research project”. Ibid., 134.
\textsuperscript{14} Ibid., 134.
\textsuperscript{15} This is a term used in EU immigration context to distinguish between those who are members and non-members of EU states. However, it is important to note that the migration rights among TCNs are highly stratified by the EU. Some TCNs are subject to minimal border control (those from e.g. USA, Australia etc.) others – almost exclusively from countries of the global South – are subject to extremely restrictive practices, as will be shown in chapter 1. When I use the term TCN in this thesis it is the latter group I am referring to.
practices such as profiling and discrimination, non-transparent decision making and categorization/on-going surveillance.

While resident in the EU, TCNs have to live with the reality that immigration controls transcend the physical border posts and have been linked up as a network to internal structures, thereby creating a system of "surveillance" that particularly monitors them. In this surveillance the rights of immigrants are so "stratified", some of them are left with 'no rights' at all due to their immigration status. In their struggle, they try to access possible avenues to have rights accorded to them (such as marriage).

In these practices, migrants are prevented from maximizing their general wellbeing which is the goal of consequentialist cosmopolitanism. The attainment of genuine well-being for TCNs is very much dependent on their capability to make a choice concerning their place of residence or where life opportunities will be maximized. The research work shows that the majority of the interviewees were more likely to have improved life options when they successfully crossed the EU borders and worked in the developed economies. Migrants' well-being is in no way maximised when their entry is restricted and when they are prevented from accessing the labour market post migration. More so, the well-being of migrants is not promoted considering the dangers encountered by people who opt to travel illegally due to the highly restrictive border regime. It goes to show that restricting people from taking available opportunities does not in essence promote general human well-being.

Furthermore, the absence of 'a right of entry' for third country nationals even after receiving their visas implies they are subject to 'thorough checks' at the EU borders. Many participants experienced being harassed on the basis of their nationality in a way that compromises their

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human dignity and rights. This equally extends to ‘illegal travellers’, the undocumented whose human rights are not protected because of their immigration status. Consequentialist cosmopolitanism advocates a human rights regime where citizens and aliens are protected. Looking at the outcome of the field research, the evidence of discrimination and profiling against those who try to enter legally, the stratification of migrant’s rights post migration, and the human consequences of irregular journeys suggests that the current border regime does not meet the consequentialist cosmopolitan standard.

In the analysis of the field work, it is equally acknowledged that border checks are consistent with that element of consequentialist cosmopolitanism which recognises “the principle of self-determination”. Arguments for restricted borders cannot be dismissed out-right because as I will show in chapter three there are obvious reasons to keep controls at the borders. For example, the state has a responsibility to protect the interests of its citizens who have a claim to what they collectively own. This means the right of entry for migrants has to be balanced against a prima facie equally valid right of original residents to preserve their societal political projects. However, a consequentialist global political system allows the existence of borders which in essence protect the principle of self-determination, but at the same time should not allow violations of human rights, discriminations against any particular group or unequal treatment of people.

Based on the interviewee analysis, chapter six returns to the question of whether the communitarian or particularist practice of using enormous manpower and resources to keep away migrants in the interests of “members” is practically effective or ethically right. One begins to see ethically the immediate need for ‘fairness’ regarding EU border policies for all human persons, regardless of their being citizens or being born in affluent or poor states.
Finally, in chapter six, this thesis argues that reconciling particularists’ commitments with cosmopolitan concerns for global justice is a necessity. Reflecting on the ethical debates in the light of the border experiences of people from the South East of Nigeria, who are typical of TCNs from the global South, consequentialist cosmopolitanism provides a framework through which communitarian and cosmopolitan divergences can be reconciled.

Therefore, even if free movement across borders is not to be recognized as an ‘unqualified’ right, more has to be done to create borders that in essence do not discriminate against TCNs as easy targets. Consequentialist cosmopolitanism, as outlined in Chapter three, sees open immigration as instrumental for global justice, but does not presume an ‘unqualified’ right to immigration. Decisions on borders made from a consequentialist cosmopolitan perspective will certainly bring into consideration the potential life options that migrants hope to get, and at the same time, will not disregard the concerns of ‘members’ in the bounded worlds.

In closing the thesis, suggested policy changes which would enable the implementation of a fairer border regime in the light of consequentialist cosmopolitanism will be presented. Such changes will create an ethically more sound - *moderately open border regime*. These reforms will arguably work to the benefit of both migrants and 'members' and help to establish a consequentialist cosmopolitan world order.
CHAPTER ONE

RESTRICTIVE MIGRATION REGIMES IN THE CONTEMPORARY WORLD:

THE CASE OF THE EUROPEAN UNION STATES

Introduction

This first chapter looks at the recent developments in the immigration policies of the EU in general and Ireland in particular, in relation to those who are grouped as "Third Country Nationals" from the global South in the EU context. Third Country Nationals (TCNs) in the European sense is a categorization which is generally applied to those who are non-EU members. The term in this thesis primarily refers to people who come from those third countries which are subject to additional restrictions in border crossing and migration. As will become clearer in this chapter, Third Country Nationals from the liberal developed world are not subject to the same tough restrictions as are Third Country Nationals from the developing world.

This chapter shows how in the present international border regime, developed liberal states use various tools in restricting the movement of people from the global South to the North. This is evident in the way immigration policies are crafted, revised and implemented. One thing for sure is that, overall, borders in the developed liberal states are purposely meant to restrict the migration of people from less-developed nations.

To understand this better, the chapter begins with a study of the historical developments of international movements of people, how the use of travel documents became important and how immigration restrictions have continued to grow tighter and tighter. Historically, the
'Westphalian' arrangement of states took root from 1648, states have exercised unilateral right of control over their borders. Sovereign states are entitled (with some exceptions) to determine who cross their borders and under what conditions. Though this continues to be a fundamental principle of international politics, it is notable that the contemporary process of globalization challenges states' borders by constantly cutting across established borders in relation to economic integration, cultural diffusion and so on.

However, despite the impact of globalization, immigration policies of developed nations in relation to poorer nations in the Southern hemisphere entail that in respect to human movement, borders are still very much unchanged. Rather, there are growing populist demands to restrict migration of people from these parts of the world.

As will be shown below, these restrictions are quite evident in the EU immigration policies outlined in the Schengen zone, and in Ireland. Within these policies, it is remarkable that while movement of people within the European Union countries for EU citizens and some selected few is made easy and less stressful, generally movement of people from the South to the North is very much restricted. As will be explained below, there are several ‘travel policies’ that are often directed at people moving from the less developed nations and the bar for requirements is often raised, making it extremely hard and rigorous for TCNs to cross EU borders.

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17 Westphalia has for a long period provided nation-states with a system of interaction; this treaty protects states from any interference, creating a balance of power among states, placing them on equal footing and explicitly blocking any outside moral inquiry into the internal arrangements of states. (See, Andrew Linklater, ed., International Relations: Critical Concepts in Political Science vol. V, London: Routledge, 2000), 2117-9.

18 For example, free movement in the EU implies that sovereign EU states are not in full control of their borders in relation to exit and entry of members.


1.1 TRENDS IN CONTEMPORARY INTERNATIONAL BORDER ARRANGEMENTS

1.1.1 History and Developments

Historically, migration has always been part of the human experience as early humankind was "essentially nomadic." Traders, pilgrims, other individuals and groups travelled long distances prior to the advent of the 1648 treaty of Westphalia which began the process of the solidification of nation-states throughout the entire world.

Migration scholars have noted four significant periods in human migration from the sixteenth century till today. (1) The Mercantile period of 1500-1800: associated with European colonization and trade (2) The Industrial Period of 1800-1925: a consequence of the first economic growth and industrialization (3) A time of limited migration between 1930 and 1960 (4) Post-industrial Migration from 1960s to 1990s: the expansion of human migration to a global phenomenon. This last period saw the increase of emigration in Asia, Africa and South America. From the end of 20th century to the beginning of 21st century, a fifth period of human migration has also been noted, a period that has seen immigration policies returning to "increasing restrictiveness", especially in the developed worlds.

Statistics show there are approximately 200 million international migrants in our world today; that is one in 35 people or 3% of the world population. Such a figure could match the

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24 Segal, Elliot, and Mayadas, Immigration Worldwide, 18.
population of Nigeria and South Africa put together, or the population of Brazil, which is the fifth most populated country in the world. Migration of people therefore continues to be an on-going thing.

Migration is not therefore something historically abnormal but during the earlier phases borders were not such "barriers". In principle, the Westphalian model provided the mechanism for international relations and the non-interference states might legitimately expect of one another. In this arrangement, one way in which the authority of the state manifests itself is that the government of any state unilaterally determines who can cross its borders and the various conditions under which such crossings are possible. The model implies that sovereign states unilaterally take charge of their mapped out territories, autonomously deciding what happens within their states, including the right to admit foreigners. However, it was only in the 20th Century that border control began to be more pronounced. For example, studies show that even up to the 20th century, about 38 million Europeans went to the United States to settle during the period 1820-1940.

Gradually over the last century, the use of proof of citizenship for international travellers became important as they had to present themselves to officials who enforced state rules at the borders. This over time has evolved into the issuance of 'passports' to citizens, which have to be presented at international borders, and this became fully established in the early 20th century.

29 The first conference on passports was held in the 20th century by the League of Nations in 1920. It adopted standard passport and visa formats for all signatory States. A second Conference in 1926 endorsed the previous recommendations of 1920, and went further to improve the standard international passport format. Though the League Nations was dissolved after World War I, it was revived with the creation of the International Civil Aviation Organization (ICAO) in 1946, an agency under the United Nations. Passport standardization for every nation, as we have it today, only came about in 1980, under the auspices of the ICAO.
It was during the First World War that European governments introduced stricter border passport requirements for security reasons and to control the emigration of citizens with useful skills, retaining potential manpower. These controls remained in place after the war and became standard procedure. It was only in 1920 at the ‘Paris Conference on Passports’ that states adopted and standardized the now familiar multi-paged book format passport. After this, some other specifications were added during the second international passport conference in Geneva May 1926.\(^{30}\) With the increasing use of international passports the visa system also evolved at the end of 19\(^{th}\) century. A visa is defined as;

\[ \text{[A]} \text{n authorization given by a state to the nationals of another state to travel and present themselves to border control and authorities for inspection at ports of entry.} \]\(^{31}\)

Visas show that a person is authorized to enter the territory for which it is issued, but this authorization will be subject to permission of an immigration official at the time of actual entry. On the other hand, due to some bilateral arrangements between countries or regions, visas may also be issued at the port of entry without requiring prior application at the state of origin. The country issuing the visa typically attaches various conditions of stay, such as the territory covered by the visa, dates of the validity, period of stay, whether the visa is valid for more than one visit, etc. The possession of a visa is not in itself a guarantee of entry into the country that issued it, and a visa can be revoked at any time. Though visas evolved initially as a tool of immigration law enforcement, they have in our present world order also become a tool of diplomacy, “states use the issuance or denial of visas to individuals, certain groups, or all nationals of particular states in efforts to influence other states’ policies.”\(^{32}\)


\(^{31}\)Koslowski, “International Travel,” 113-114.

\(^{32}\)Ibid., 114.
From the early part of the 20th century till today, international passports have become requirements for international border crossings and passports have to contain appropriate visas depending on the borders that are being crossed. It has become a common practice that travellers' passports have to be checked and crosschecked at the port of entries to their destinations, and this today is the accepted practice. Through these checks, the use of international passports becomes a means through which states document and control movements across their borders. The growing senses of nationalism, states' protectionism and reactions to globalization in the last few decades have made border controls stricter. However, it is important to recognise that these controls have not always been in place but have been constructed over time.

1.1.2 International borders in the contemporary world

In international law "everyone has the right to leave any country including his own, and to return to his country." Though leaving one's country would logically mean entering another, there is no explicit right to immigration, because such a right is left at the discretion of the receiving states since they have the unilateral power to decide on who crosses their borders. States decide whom to welcome at their borders, with some states entering into reciprocal partnership with others in terms of visa regulations like Britain and America, Canada and Ireland, etc. Some others have regional cooperation like ECOWAS, COMESA, EU, America and Canada.

It can be observed that many developed liberal states in the Northern hemisphere appear more welcoming to each other's citizens, having more relaxed immigration rules for citizens from

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33 Universal Declaration of Human Rights, article 13, 2. (1948).
34 Economic Community of West African States.
35 Common Market for Eastern and Southern Africa.
their states. On the other hand, this welcoming attitude is not always extended to citizens of less developed nations who want to cross the borders of developed states. A shared feature of contemporary immigration policies of developed states in relation to less developed states is their restrictive nature; many developed states feel the need to be more restrictive in their borders than they have ever been. Neumayer, for example, has shown that while the EU member states, United States, OECD, and other nations with relatively high gross domestic products per capita permit visa-free travel to nationals from similarly wealthy countries, these countries uniformly maintain visa requirements for citizens of relatively poorer countries in the globe.36

Generally, in the present international order, one’s nationality and the passport one holds determines the procedures one has to go through before entry is granted to any developed nation. Some citizens from the global South will move more easily if they are wealthy or meet the criteria of the “blue card directive”37 – which allows them to be cherry-picked for their skills. However, in the vast majority of cases the visa procedure for those coming from the global South will be totally different because of their ‘unprivileged’ position. For example, an ‘Irish born’ citizen travelling to Canada or New Zealand will go through a formal procedure of visa application but an average Nigerian, Kenyan or Ivorian citizen will have to go through a far more rigorous visa application process. Similarly, a Canadian or American citizen travelling to anywhere in the Eurozone do not have to bother about making a visa application as a 90 day visa can be obtained from any counter at the ports of entry. It becomes a different thing when a Cameroonian, Ghanaian or Malian would want to do the

37 On the 25th of May 2009, the EU adopted the ‘blue card directive’ which allows TCNs to take up highly qualified jobs in 24 EU member states, excluding UK, Ireland and Denmark who are not taking part in this directive. The EU blue card enables the EU to attract highly skilled workers from developing nations. This helps them compete against other potential destinations for highly skilled workers, Canada, Australia, US and New Zealand. (EC/50/2009).
same. For many from the global South, visa processing is a long, fluky wait of weeks or months with practically nothing guaranteed.

Travellers from most developing countries have to be issued with visas at the consular office of their destination countries in their home countries. If approved, the consular officers issue visas by stamping them in the prospective travellers’ passport before one embarks on a journey. But the most confusing thing is that the stamping of visas does not guarantee admission, it is only the destination states’ border control officials who are authorized to grant admission. This means that someone who is issued with a visa can be turned back at the port of entry if the officials are not satisfied about his/her documents. One can spend a fortune buying an air ticket and preparing for a journey only to be turned back at the port of entry by an immigration officer.

In addition to these restrictive ‘travel policies’, it is quite obvious that the borders between Western nations and their less-rich neighbours have become much more fortified, “partly through the use of sophisticated methods of control.” Borders have technologically advanced equipment like high-intensity lighting, high steel fencing, body heat- and motion-detecting sensors and video surveillance.

In the present world, it is also the case that as well as the controls which take place at the established external borders, borders controls are in many ways “delocalized”, with controls taking place far away from the geographical location of borders. Apart from the external controls, there are equally ‘internal controls’ where states use all possible means to identify undocumented migrants who have successfully entered undetected or whose legal stays have expired. Police or immigration officers often visit workplaces to smoke out undocumented migrants.  

38 Kosowski, “International Travel,” 114.
39 Ibid.
41 Ibid., 71.
workers who may be illegally using other people’s documents to keep themselves in the labour market.

Furthermore, access to social welfare and benefits are often used to check beneficiaries’ legal status. Sometimes too, identity checks are sporadically carried out in people’s residences, factories, buses, trains and public places so as to apprehend ‘illegal migrants’ who may have entered by illegal means or have overstayed the duration of their visas.

One other way of migration control is through cooperation between sending and receiving countries or between airlines and transit nations. Receiving countries often financially support less-rich nations to prevent irregular migration for collaborating in the repatriation of apprehended ‘illegal migrants’. Transiting countries are also made to collaborate, bearing in mind that airlines/other carriers are given the responsibility for properly checking the documents of their passengers, with failure to do so attracting heavy penalties.

Controlling migration of people from the global South to the North has always proved to be a costly affair. According to an International Organization for Migration (IOM) report, the twenty-five richest countries spend 25 to 30 billion dollars per year on the enforcement of immigration laws. This money covers what these states spend on visas, permits, border controls, prosecutions relating to contravening immigration rules, detaining, removing illegal migrants, carrying out labour inspections and sanctioning employers, treating asylum seekers

42 The term ‘illegal migrants’ is used by governments but objected to by many academics and NGOs, because, a person cannot be illegal. The use of the term ‘illegal immigrants’ reduces human beings to subhuman status. The word ‘illegal’ should be used to describe only actions of people, but not people.


claims, resettling refugees and searching for illegal migrants.\footnote{Ibid.} Despite all the huge expenditure, the persistence of undocumented migration illustrates how even sophisticated forms of control do not really stop people.

From the litany of mechanisms detailed above, it can certainly be seen that there are concerted efforts by developed nations to restrict the entry of people at the borders even though these efforts do not seem to deter migrants from entering through various channels. Liberal industrialized states are working together more than ever so as to maintain the same policy instruments chosen to control the movement of people into their states at a regional level. Western developed states have in the last few decades increased border policing and tended to coalesce to protect what some see as their “privileged positions” by deterring asylum applications and limiting mass migration of people to these regions.\footnote{Anthony Richmond, \textit{Global Apartheid, Refugees, Racism and the New World Order} (Toronto: Oxford University Press, 1994), 216.} A clear example of this effort is the development of common European immigration policies.

\section*{1.2. Europe: The Schengen zone}

\subsection*{1.2.1 Recent Developments in the EU border regimes}

The rights of EU citizens to cross borders have developed over time. Originally it was only for economic purposes but since 1951, EU citizens have been given increasing rights of free movement within the Union for the purpose of leisure, employment and residence.\footnote{Franck Düvell, “Irregular Migration,” in \textit{Global Migration Governance}, ed. Alexander Betts. (N.Y: Oxford University Press, 2011),78-108, at p. 82.} Since the mid-80s, the EU has made efforts to supplement this right by “increasingly restricting the rights of citizens of non-EU member states to enter the EU.”\footnote{Ibid.} Since not all member states
were able to agree initially on the free movement of EU citizens, a few member states – France, Germany, Belgium, Luxembourg and the Netherlands – agreed in 1985 on the free movement of persons thereby creating a territory with no internal borders i.e. the “Schengen Area.” The Schengen Area represents a territory where free movement of citizens is guaranteed, and it is founded on the Schengen Agreement which was signed on 14th June 1985.

Though the Schengen Agreement started between 5 signatory nations, the Schengen Area has been gradually expanding and now includes nearly every Member State of the EU. After its birth in the year 1985, Italy became a signatory on 27th November 1990 followed by Spain and Portugal on 25th June 1991. They were followed by various other nations, Greece on 6th November 1992, Austria on 28th April 1995, Denmark, Finland and Sweden on 19th December 1996. Equally, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia joined on 21 December 2007 and Switzerland (an EEA member) on 12 December 2008.

Most recently, as of January 1st 2014, under EU law and the EU accession treaties of Bulgaria and Romania, border restrictions have been lifted for both countries. Labour market restrictions for their citizens in the EU were lifted as they have fulfilled the requirements for Schengen accession. Notably, Ireland opted to stay out of the Schengen area as it shares a common travel area with the UK which is not part of the Schengen area. Therefore Ireland, like the UK, does not participate with other EU members on the common border control and visa provision, instead they only participate in the ‘police and criminal judicial co-operation measures’.

\[\text{\textsuperscript{49}}\]

\[\text{\textsuperscript{49}}\] Ireland’s request in June 2000 to take part in some aspects of the Schengen was adopted and approved on 28 February 2002. See EC/192/2002
Non-EU countries like Iceland and Norway belong together with Sweden, Finland and Denmark to the Nordic Passport Union, which like the Schengen countries abolished internal border checks. Iceland and Norway have been associated with the Schengen Agreements since December 1996, and though they do not have voting rights they can express their opinions and formulate proposals. To extend this association, the agreement on Iceland's and Norway's association with the implementation, application and development of the Schengen acquis, as based on the Council Decision, 1999/439/EC of 17th May 1999, was signed between Iceland, Norway and the EU on 18th May 1999. Switzerland has the same associate status as Norway and Iceland. With the signing of the “Treaty of Amsterdam”, Schengen cooperation was incorporated into the EU framework on 1st May 1999.

The original agreement between the first five member nations abolished internal border checks between the signatories. Hence, they created a single external border “where immigration checks for the Schengen area are carried out in accordance with identical procedures.” This means that Schengen harmonizes external border controls, cross-border policing and judicial co-operation among EU member states. So cooperation in the EU to eliminate restrictions on mobility between member states, has consequently ushered in a new agenda for a common EU immigration and asylum policy.

At the core of EU migration policies lies the assumption that “internal free movement requires tough immigration and external border controls”. Citizens of EU member states are encouraged to exercise their right to move and reside freely within member states and the Schengen agreement suppresses administrative formalities to the bare essentials, giving

51 Ibid.
Union citizens and their “family members”\textsuperscript{54} the right to move and reside freely within the member states, the right of permanent residence and only allowing restrictions of these rights on grounds of public policy, public security or public health.\textsuperscript{55} Free movement of EU citizens and their family members is a fundamental right which is guaranteed by the EU Treaties, realized through the area of freedom, security and justice without internal borders. Citizens can cross member states borders with only a minimal check.

Internal open borders have been complemented by strengthened or fortified external borders and tough external border controls in the EU has become a corollary of loose internal borders.\textsuperscript{56} Since its initiation, Schengen extended its focus toward common measures aspiring to attain the following:

\begin{itemize}
  \item [F]ree movement for persons in the EU, strengthened external border controls, build-up of internal surveillance of people’s movement, cooperation in policing and intelligence, harmonization of the fight against crime and narcotics, judicial cooperation, harmonization of visa and asylum policy, and common measures to fight illegal immigration and stay.\textsuperscript{57}
\end{itemize}

The present EU immigration regime is meant to correspond to the three main strands of EU policy namely; ‘prosperity’, ‘solidarity’ and ‘security’. Prosperity gives guidelines for the contribution legal immigration can make to the socio-economic development of the EU;


\textsuperscript{56} Boswell, “Migration in Europe,” 103.

\textsuperscript{57} Peo Hansen and Sandy Brian Hager, The Politics of European Citizenship, Deepening Contradictions in Social Rights and Migration Policy (New York: Berghahn, 2010), 81.
solidarity encourages coordination between member states and cooperation with third countries; while security gives guidelines for effectively fighting illegal immigration.  

With these aims in mind, there is a visa policy that serves the interests of Europe and its EEA partners. The EU and its member states maintain a four-tier approach with controls on visa applicants at all stages; they are expected to take up a uniform European Schengen visa, they are to use common centres for issuing visas, they are to adopt the application of an electronic travel authorization for third-country nationals, and in more detail harmonize the visa procedures, in particular with regard to long term visas.  

Also on the ground of security there are integrated border management arrangements, efforts to stop illegal immigration, zero tolerance for human trafficking and an “effective and sustainable return policy for illegal migrants”. The EU has consistently justified the classification of illegal immigration as a crime and their restrictive migration policies. In the light of these developments, which have necessitated the shrinking of EU internal borders and the fortification of the external borders, a common restrictive immigration policy for TCNs is in vogue.


59 Ibid.

60 Ibid.

1.2.2 Restrictive immigration Policy for Third Country Nationals

In the context of the European Union the term ‘third country’ is used in the Treaties, where it means a country that is not a member of the Union. TCN is a specific legal term applying only in the EU, and it applies to all citizens of non EU states, not just those from less developed countries. This comprises of all who are non EU citizens and therefore not European Union members. The meaning is derived from ‘third country’ in the sense of one not party to an agreement between two or more other countries. This study recognises that to an extent the EU’s restrictive immigration policies concern the entry of all Third Country Nationals into EU territory, including those who come from non-EU liberal, developed states. However the focus of this thesis is on those TCNs to whom further distinctions are made on the basis of their nationalities. Certain restrictions generally apply to all non-EU citizens, but those which concern me here are those additional restrictions which apply to selected third country nationals from the global South. It is crystal clear that the EU uses selective methods in admitting and discriminating between third country immigrants at its borders.

The council regulation (EC) No 539/2001 of March 2001 gives a common list of about 131 countries whose nationals require a visa to enter Schengen territory (Annex I) and this roster is reviewed yearly\(^{62}\). In the last review as at 2014, the total number of states in this list has slightly come down to 124. These states comprise:

Afghanistan, Algeria, Angola, Armenia, Azerbaijan, Bahrain, Bangladesh, Belarus, Belize, Benin, Bhutan, Bolivia, Botswana, Burkina Faso, Burma/Myanmar, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, China, Colombia, Congo, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Ecuador,


This list excludes territories and entities that are not recognized as states by at least one member state.

It also lists third countries whose nationals are exempt from that requirement (Annex II). In 2014, these states comprise:

Albania, Andorra, Antigua & Barbuda, Argentina, Australia, Bahamy, Barbados, Bosnia & Herzegovina, Brazil, Brunei Darussalam, Canada, Chile, Costa Rica, Croatia, Guatemala, Holy See, Honduras, Israel, Japan, Macedonia, Malaysia, Mauritius, Mexico, Monaco, Montenegro, New Zealand, Nicaragua, Panama,

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64 Ibid.

Paraguay, Saint Kitts and Nevis, Salvador, San Marino, Serbia, Seychelles, Singapore, South Korea, United States of America, Uruguay, Venezuela.

Also, special administrative regions of People's Republic of China: Hong Kong SAR (2) and Macao SAR (3) are included in this list.

The Council adopt rules relating to visas for intended stays of no more than three months. The determination of those third countries whose nationals are subject to the visa requirement, and those exempt from it, is supposed to be governed by a considered, case by case assessment of a variety of criteria relating inter alia to illegal immigration, public policy and security, and to the European Union’s external relations with third countries. Considerations are also given to the implications of regional coherence and reciprocity in relation to those third countries. However, the criteria based on which a third country will be added to the negative list in Annex I or the positive list in Annex II are not found in the document itself, the decision to add them to either list is therefore “clearly of a political nature”.

It has been also noted that EC Regulation 539/2001 simply incorporated the lists that the Schengen states had already agreed upon on an intergovernmental level almost in their entirety thereby contradicting the stipulation of a case by case assessment of each third country. Hence, it is quite clear that the classification of negative and positive visa lists

67 Ibid.
68 EC 539/2001; Hailbroner, EU Immigration and asylum law, 30.
70 Ibid., 62.
implies a distinction of certain groups of persons from others independent of the individual’s characteristics.

A closer look reveals that EU borders are more restrictive on immigrants from the poor nations in the Southern hemisphere than those from developed countries. Here, the focus is on EU immigration policy control which extends to all measures taken to select, admit or deport third-country nationals. This includes the rules that guide the admission of TCNs when they apply to be admitted and while they cross the EU borders. Also, the rules that control TCNs once they visit or take up residence in the EU member states. This discrimination, in the words of Jens Sorenson, is quite clear when he says,

[T]he exclusion of non-EU nationals has decisive nationalistic traits. EFTA country nationals which are non EU nationals and thus just as alien to the Member States and the European Union as citizens from other third countries, are allowed the rights of free movement and residence under the EEA agreement, while (some) third country nationals who could be culturally, socially and economically integrated in one of the member states are not.

In this way, it is clearly expressed that the EU law binds the member states to treat non-citizens who are resident unequally. The selectivity that is apparent while migrants make visa applications is equally felt even when they are resident as distinctions are still made between non-EU residents. Non-EU nationals like EFTA nationals have the freedom to move in and out or settle anywhere in Europe, while these selected third country nationals, whether

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72 Sorenson, The Exclusive European Citizenship, 164.
73 Sorenson, 166.
they are resident or on visiting Schengen visa, are required by EU law to go through 'thorough checks' any time they cross the EU external borders.

External border controls, therefore, include all “entry restrictions and border controls”, “visa schemes”, “carrier liabilities”, “legislation against illegal trafficking,” and other preventive measures meant to stop any form of illegal migration from these third countries. Internal border controls include identity checks, common asylum procedures etc.

The common visa policy includes regulations on the security of documents and it requires, of course, information exchange. Thus, the European Schengen Information System (SIS I and II) as well as the Visa Information System (VIS) were adopted, also an electronic system for the identification of asylum seekers’ fingerprints has been introduced (EURODAC and FADO), as well as an image archiving system to combat illegal immigration.

To fortify its external borders the EU equally established the biometric fingerprints system in June 2004. This means that applicants for a VIS Schengen visa have to give their biometric information, which consists of ten fingerprints and their facial image. This is then entered into the system and is supposed to remain valid for five years. The data base is in Strasbourg, with a back-up site in Austria. The aim in collecting this information is to ensure that the person who possesses the biometric visa is the one who applied for it and is the one crossing

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74 In the EU, Third Country Nationals who are on Schengen visiting visas, or who reside in the Schengen EU zone, enjoy free internal border crossing within the Schengen zone. Resident TCNs moving out of the Schengen zone and coming in through any Schengen external border would require 'thorough check' as the EU regulation requires.

75 Ibid.


77 Bendel, “Everything under Control,” 38. Even to transit through the Schengen area, there exists a list of third countries whose nationals are required to be in possession of an airport transit visa (with some exceptions), when passing through the international transit area of airports situated on the territory of the member states.

the EU border. The biometric system became live in 2009 for North African and Middle Eastern countries. The system was to be applied by Schengen and associated states in all official EU borders and consulates within three years of the system going live. The VIS is now used for visa applications. Despite the fact that it has been implemented, it is a subject of hot debate by human rights activists.

The European Border Agency (Frontex) was established in 2005 as a coordinating agency for external border policy amongst member states. The task of Frontex is to support national authorities in training and risk assessment and in monitoring borders between member states. Frontex is expected to implement border management measures in the Mediterranean region, to present risk analysis reports on Africa, and to carry out a feasibility study on reinforcing monitoring and surveillance on the Southern maritime border of the EU, namely the Mediterranean Sea. This involves the Mediterranean Coastal Patrols Network of the EU Member states and North African countries.

All of these measures mean that people crossing the EU borders from Africa are subject to thorough checks at the visa application stage and at the EU borders. For TCNs crossing the EU borders, the conditions governing their entry must be verified, also their Visa Information System VIS must be verified, and documents authorizing their residence and the pursuit of a

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80 The collection of biometric data of individuals raises new and complex questions concerning human rights as this involves processing and sharing of a person’s unique, physical identifiers. It poses important questions concerning individuals’ right to privacy as there are some degrees of friction between the security interests of the policy makers and the right to privacy of those subjected to go through VIS procedures. (See, Bendel, “Everything under Control,” 38; See also “Biometrics, Migrants and Human Rights”, March 1 2005, Rebekah Thomas, accessed April 2 2014 at http://www.migrationpolicy.org/article/biometrics-migrants-and-human-rights.)
professional activity must be shown. For stays not exceeding three months per a six-month period, a non-EU visa applicant must possess a valid travel document, possess a valid visa justifying the purpose of intended stay and must have a sufficient means of subsistence.

Those intending to cross EU borders must also not have their names issued in the Schengen Information System for the purpose of refusing entry, and finally an immigrant must not be considered a threat to public policy, internal security, public health or the international relations of nations. Non EU nationals can be refused entry at the port of entry if these conditions are not satisfactorily met. A person already issued a visa can equally be prevented from entry if there are indications that these other requirements are not being met.

The tight immigration policy in the EU equally extends to the issue of ‘asylum’. For example, the ‘Dublin Convention’, which was ratified in 1990 and came into force in 1997, allows asylum seekers to file their application in one EU member state only. This means that any application can either fail or be successful depending on how it is handled in the place where it is first launched, and an application cannot be re-launched in any other EU country.

In the last few years, Dublin I has been revised and termed Dublin II. This places the responsibility on the states through which migrants and refugees illegally enter the EU to deal with the asylum claim. Destination countries, therefore, return people to these transit countries. It is notable that this arrangement has been proving difficult since transit countries are often reluctant to accept those who already have crossed their borders. Sometimes

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85 Ibid.
86 The Dublin Convention took effect in autumn 1997; it ensures that any asylum applicant in Europe can only get one opportunity for his or her asylum application to be considered. (See, Alice Bloch and Carl Levy, Refugees, Citizenship and Social Policy in Europe, London: Macmillan, 1999, 31-34).
87 Boswell, “Migration in Europe,” 104.
asylum seekers intentionally destroy their travelling documents so as to evade being sent back to the countries they have successfully crossed.

As well as the reinforcement of the EU’s own external borders and internal surveillance of migrants, it is notable that the EU migration control system has been expanded beyond the EU’s own borders to other countries outside the EU since the mid-90s. It is evident that EU ‘candidate countries’ were required to implement EU migration control standards and policies as a prerequisite for being accepted as members. They were made to do this thirteen years before they finally joined the EU while non-EU candidates in the EU neighbourhood were also targeted to step up their border controls. In 1995, an agreement to collaborate in controlling illegal immigration was reached between the EU and its non-EU Mediterranean neighbours, Maghreb states, Egypt, Syria, Israel, Lebanon, Palestine and others. The EU’s Tampere Conference declared, “the European Union needs a comprehensive approach to migration” and agreed to integrate all countries of transit and origin into a comprehensive migration control policy and globally export EU policies so as to ensure strict external border control.

At the Seville European Council 21-2 June 2002, several member states (led by Spain and UK) called for the EU to make aid to third countries conditional on their efforts to stop migration movements towards the EU and on their willingness to take illegal immigrants

88 Like Poland, Hungary, Czech Republic, Slovakia, Lithuania, Estonia, Latvia, Cyprus, Malta, Romania, and Bulgaria.
89 Düvell, “Irregular Migration,” 85.
90 Ibid.
92 Ibid.
back. Failure by any nation to comply would mean that such a nation risks isolation from
the EU.

This approach to seek cooperation with third countries to combat irregular migration has been
dubbed the ‘external dimension’ of cooperation in Justice and Home Affairs (JHA). Since
its first clear articulation in the conclusions at Tampere in 1999, this has been “forcefully
pursued”, to say the least, by the JHA council in the last few years. They have promoted
measures such as reinforced border control and migration management in countries
neighbouring the EU, ‘pre-frontier’ control (whereby EU officials assist with border control
in third countries) and, cooperation in combating human smuggling and trafficking. During
these years, they have helped in the drafting of agreements that allow the return of irregular
migrants and asylum seekers to countries of transit and origin. Some have seen these moves
as a creation of “buffer zone” around the EU.

1.3 Outside Schengen: The Republic of Ireland

Ireland and the United Kingdom were the only EU members which, prior to the 2004 EU
enlargement, were not signatories to the Schengen Agreement. Though both countries
maintain a Common Travel Area with open land border between them, they still have distinct
border policies. Regarding third country nationals the Irish republic, like the EU, still

93 David Cronin, “Immigration: Time to see if Moderates or Extremists are running the Show,” European Voice, June (2002):20-6.
94 Boswell, “Migration in Europe,” 104.
95 Ibid.
96 Ibid., 104-5.
maintains strict immigration rules and this is evident when we examine their immigration policies for third country nationals.

1.3.1 IRISH REPUBLIC: Historical development of Irish Immigration Policies

The evolution of today's Irish immigration policy began in 1935 with the passing of ‘The Aliens Act’ and ‘The Irish Nationality and Citizenship Act’ and these still form the basis of Irish immigration policy to date. The Aliens Act of 1935 defines the Minister of Justice’s (MOJ) powers in relation to the control of aliens in Ireland including their entitlement to work permits. It gave him or her extensive discretionary powers thereby providing “for the control of Aliens and for other matters relating to Aliens.”97 For example, the MOJ has the power to ‘prohibit’ all non-nationals from entering the state and she or he can equally have aliens deported, or even restrict where migrants may reside when they are granted admission into the country.98

On the other hand, The Irish Nationality and Citizenship Act of 1935 establish the MOJ’s powers concerning naturalisation and citizenship. It gave an extremely wide range of powers to the MOJ. This Act outlined in detail how Irish citizenship could be acquired. At the time

98 See, Aliens Act 1935, Sec 5.1.
this was by *ius soli* - being born in the Irish State\(^9^9\) and by *ius sanguinis* - being of Irish descent i.e. being born of an Irish father.\(^1^0^0\) Persons in these categories were automatically granted Irish citizenship. The Act also gave the MOJ extensive powers over the whole process of naturalization because applications for naturalization are made to the MOJ who uses ‘absolute discretion’ in determining who can be granted citizenship. Though the MOJ’s decision is subject to some other limitations imposed by this particular section of the Act, it is explicit that he has the power to grant or refuse naturalization.\(^1^0^1\)

Down the years there have been notable changes in the Irish immigration laws, for example, in 1956 the new Nationality and Citizenship Act, which repealed the 1935 Act, was passed. Though it repealed it, the 1956 Act is not essentially very different from the 1935 Act and many of its provisions remain unchanged in the present day. The MOJ still has the powers to issue or refuse visas, and admission into the Republic or removal from the Republic still remains his or her decision.\(^1^0^2\) Historically, it is noticeable that the use of ‘discretion’ has arguably been a major component of Irish immigration policy. This is inherently problematic as it has to be accepted that when people use the power of discretion, it is always hard to evaluate or measure the exercise of that power, because the information used for such discretionary decisions can be hidden from the public eyes.

The reality is that the Minister of Justice is reserved large amounts of discretionary powers in the 1935 and 1956 Aliens Act. As some authors point out, when immigration procedures become discretionary, they become “arbitrary.”\(^1^0^3\) Such ‘arbitrariness’ not only leads to inconsistent decision making but can sometimes allow discriminatory decisions.\(^1^0^4\) The fact is

\(^9^9\) *The Irish Nationality and Citizenship Act 1935*, Sec. 2.1.
\(^1^0^0\) Ibid., Sec. 2.2.
\(^1^0^1\) Ibid., Section 4.1.
\(^1^0^2\) Ibid., Section, 4.3 (a-d).
\(^1^0^4\) Ibid., 215.
that Irish immigration system relies much on ‘ministerial discretion’ and this is seen both in
the way immigrants are admitted and in the process of their naturalization.

Although this discretion is believed to be exercised in accordance with the Irish law and with
other legislative provisions, it has been argued that there are substantial questions regarding
the lack of transparency and inconsistency in the discretionary manner which peoples
applications can be examined.\textsuperscript{105} This is the case, because, there is the absence of any
publicly available criteria which raises more serious questions not just about “fundamental
fairness but also the lawfulness of this discretion-based system.”\textsuperscript{106} The idea is that when
immigration decisions are made out of ‘discretion’, there are possibilities of the decisions
being arbitrary and inconsistent, depending on the particular circumstances surrounding the
decision making and the individual cases.

When migrants apply for Irish visas, the granting or refusal of these will depend highly on the
verdict of the consular officials who obviously will use their power of discretion. On the
other hand, even when visas are granted, they equally can be rejected at the port of entry
depending on the judgement of the immigration officials at the entry gate. Immigration
officers representing the Minister of Justice at embassies and ports of entry reserve the power
to grant or refuse entry. The use of discretion is also extended to refugee and asylum
applications where there is equally a high degree of the use of discretion in assessing these
applications.

While these Acts continue to provide the baseline for Irish immigration policy there have
been some developments in more recent years in the context of Ireland’s economic boom.

Major changes in immigration and residency policies in Ireland from the beginning of the

\textsuperscript{105} Catherine Cosgrave, “Family Matters: Experiences of Family Reunification in Ireland (ICI, 2006),” accessed
experiences-of-family-reunification-in-ireland.

\textsuperscript{106} Ibid.
1990s were initially fairly liberal to foster rapid growth but then increasingly restrictive aimed at prioritising EU migration, cherry-picking non-EEA workers and “ensuring measured inflows” of migrant workers while at the same time “limiting the entry of asylum seekers”. In the development of the Schengen zone’s immigration policy, Ireland followed UK’s path in asking to cooperate only in some aspects of Schengen, namely police and judicial cooperation in criminal matters, the fight against drugs and the SIS. In June 2000 Ireland asked to take part in these aspects of Schengen, and the council adopted the decision 2002/192/EC approving Ireland’s request on 28 February 2002.

1.3.2 Present Practice

As it is outside Schengen, Ireland is in full control of its immigration policy regarding Non-EU nationals. The statutory instrument which has been operative since 1 January 2007 gives the list of countries that require or do not require a visa to Ireland. Non-nationals who are citizens of the 88 countries mentioned in schedule 1 of the statutory instrument do not need to be in possession of a valid Irish visa when landing in the state. Also included in this category are non-nationals who possess a valid travel document issued by Belgium, Czech Republic, Denmark, Finland Germany Iceland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal Romania, Slovakia Spain, Sweden or Switzerland. Such documents should be solely for a visit of a maximum of three months. Also, non-

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107 Triandafyllidou and Gropas, European Immigration, 171.
109 Immigration Act 2004 (Visas) (No.2) Order 2006, article 2.
nationals who have a valid resident card or valid permanent residence card would not need a visa to enter the country. \textsuperscript{110}

With the exception of all these classes of people, other non-nationals are expected to process their visas at the Irish embassies in their countries of origin or residence. The same document provides Classes of non-nationals of 17 states required to be in possession of a valid Irish transit visa when arriving at a port in the State for purposes of passing through the port in order to travel to another state. \textsuperscript{111}

Third Country Nationals coming to Ireland for the purpose of work are required to have employment permits and there have been notable changes concerning employment permits in the last few years. From the 1\textsuperscript{st} of February 2007, in line with Employment permits acts of 2003 and the Employment permits act of 2006 there are four types of employment permits in Ireland, namely; work permits, green card permits (which has replaced working visa/ work authorization scheme), spousal/dependent work permits and intra-company transfer permits.

Prior to 1\textsuperscript{st} of February 2007, in the case of visa/work authorization scheme that was first introduced in the year 2000, applicants were meant to process their applications at the Irish embassies in their countries of permanent residence or do so via the post to the visa office in Dublin. Working visas were issued to non-EU and non EEA immigrants who require entry visas to Ireland, on the other hand, work authorization were issued to those who do not require entry visas. Those on a working visa can apply for family reunification after three months of their stay in Ireland. Those on work authorization can come to Ireland with their


\textsuperscript{111} Ibid., (See especially, Schedule 2, Article 4. These states comprise Afghanistan, Albania, Cuba, DR Congo, Eritrea, Ethiopia, Ghana, Iran, Iraq, Lebanon, Moldova, Montenegro, Nigeria, Serbia, Somalia, Sri Lanka, and Zimbabwe).
family as they do not need an entry visa. The green card has replaced visa/work authorization scheme since 1st of February 2007.

From 10th April 2013 onwards there have been primary changes which are quite significant. In the first place, work permits have been available for jobs paying more that €30,000 per annum, but some other categories of jobs paying €27,000 and above can now be considered under exceptional circumstances. The Highly Skilled Occupations List (previously referred to as ‘eligible occupations list for Green Cards’) was broadened in response to shortages of key skills in the labour market. Prior to this date eligibility was confined to a particular sector, it now implies that the highly skilled eligible occupations are now permissible in any sector.

Another important aspect of the April 2013 change concerns ‘labour market needs test’ which is required when employers apply for work permits. This required employers to advertise with the Department of Social Protection’s employment services ‘FÁS’ for 8 weeks but has been reduced to 2 weeks. Again the requirement to advertise in a national newspaper was reduced to 3 days. Prior to this date employers were required to further advertise in a local newspaper, it is now optional to advertise in a local newspaper or on a jobs website for three days. A labour market test is not required when an employee applies for a work permit.

115 http://www.djei.ie/labour/workpermits/whatsnew.htm
116 Foras Aiseanna Saothair (FAS) is the Training and Employment Authority in Ireland.
117 http://www.djei.ie/labour/workpermits/whatsnew.htm
Furthermore, ‘The Ineligible Categories’ list for Employment Permits has been updated “to cater for particular shortages in relation to certain occupations involving the necessity of being able to communicate in a non-European Economic Area language”.

Some other changes took effect on the 22nd of July 2013 and paramount to these changes is that Non-EEA nationals with Stamps 1, 1A, 2, 2A or 3 residence permission, who have job offers from any occupation excluding those on the “Ineligible Categories” can apply for work permits. Prior to this date such privilege was only limited to some particular jobs deemed “highly skilled shortage occupation.” Also Non-EEA migrants on work permit for an exchange agreement or internship and holders of an intra-company transfer on a one-year training program are now allowed to apply for a work permit or Green Card from within the State. These are recent changes that arguably are meant to loosen the restrictions on Non-EEA immigrants.

However, it is important to note that employers are not supposed to offer any vacant position to non-Irish or non-EU workers, rather, employers are to offer vacant positions to Irish and EEA citizens first. They can only offer to non-EU nationals if there are no Irish or EEA citizens to take those positions. Therefore, in making applications for non-EU’s work permits, employers are to seek approval letters from ‘FÁS’ (Foras Aiseanna Saothair) who are supposed to confirm that enough efforts have been made by the employer to identify Irish and other EEA nationals to fill the vacancy.

Green cards which replaced visa/work authorization since 1st of February 2007 are given on occupations that pay €60,000 or more and some occupation with remuneration of €30,000 -

119 http://www.djei.ie/labour/workpermits/whatsnew.htm
120 “Department of Jobs, Enterprise and Innovation,” http://www.djei.ie/labour/workpermits/whatsnew19072013.htm
121 http://www.djei.ie/labour/workpermits/whatsnew19072013.htm
122 Triandafyllidou and Gropas, European Immigration, 171-172.
€59,999. These restricted occupations were also revised in April 13th 2013. Holders of green cards can have their families join them once they have been issued with the card. Either the employer or the employee can apply for green cards and it does not need ‘labour market test’. However, green cards cannot be issued to any company that has more than 50% of Non-EEA workers.

On the other hand, those on ‘work permits’ can apply for family reunification after working for 12 months in Ireland, but evidence from those who have access to ICI’s information and support service show that many applications are refused in practice. It is observable that not many migrants have come into Ireland via the family reunification route. Probably because Ireland has no clear-cut policy concerning family reunification enshrined in primary legislation. The recent MIPEX index which compares integration policies across over 30 countries shows Ireland has the least favourable family reunification policies of any country in Europe or North America.

In addition, the Irish government has opted out of the EC Directive 2003/86/EC on ‘the right of family reunification for third country nationals living in Europe.’ This suggests that decisions on family reunification in Ireland are purely based on the discretion of the Justice Minister. This will continue to be the case as there is the “absence of statutory rules governing the family reunification process.”

As mentioned earlier, the family reunification route has not seen much flow of immigrants and part of the reason could be because of the “lengthy and strict application procedures”,

123 See, ‘Highly Skilled Occupation list’ http://www.djei.ie/labour/workpermits/highlyskilledoccupationslist.htm
124 Catherine Cosgrave, p.21
125 Triandafyllidou and Gropas, 172
127 Ibid. “Immigrant Council of Ireland to Highlight Need for Effective Family Reunification Policies.”
128 Catherine Cosgrave, p.23.
"non-standardized criteria" and "non-transparent decision making" involved. These points corroborate the issue of discretion and arbitrariness concerning Irish immigration procedures which equally have already been mentioned. Among 28 MIPEX countries compared in 2006, Ireland ranked the worst in the provision of long term residence as ‘long term resident’ does not exist in Ireland and migrant’s right to family reunion have been ‘quite discretionary and dependent on their work permits’. In this report migrants living in Ireland for the long term are ranked the second least and those living in Ireland for the long term without naturalization have the least favourable rights among the 28 MIPEX countries. The latest report on MIPEX countries, ‘family reunion’ procedures are the worst among 31 MIPEX countries; as Ireland still does not have any formal family unification procedures. In Ireland, the fee for naturalization (€950) is one of the highest in Europe and North America. In this MIPEX report, it is stated that the Irish government restricts the access of family members to work, as since 2009 spousal/dependant work permits have not been made available to spouses, those who are dependants of new permit holders and those who are civil partners.

For family reunifications, applications are always made to the Minister for Justice then the ORAC (Office of the Refugee Application Commissioner) is charged with processing them and with making recommendations to the Minister. The Minister exercises discretionary power in granting or rejecting applications based on ORAC’s recommendations.

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129 Triandafyllidou and Gropas, European Immigration, 172
130 See Chapter 1 pp.36-37; See also “Immigrant Council of Ireland to Highlight Need for Effective Family Reunification Policies”
131 Migrant Integration Policy Index (MIPEX), (Brussels: British Council and Migration Policy Group Publication, September 2007), 92-97
132 Ibid., 95
133 Ibid.
134 Ibid.
135 Ibid.
136 Triandafyllidou and Gropas, European Immigration, 173.
It is evident that Ireland witnessed huge increases in asylum applications during the 1990s into the 2000s, though the numbers have been falling substantially in recent years.\textsuperscript{137} Up until 2003, immigrants, including asylum seekers, who become parents of a child or children born in Ireland, could apply for a residence permit solely on that basis, since the Irish Constitution granted the right of naturalization to all children born on the Island of Ireland.\textsuperscript{138} On February 19th, 2003, the Irish Justice Minister issued orders to stop granting residence permits to immigrant parents of Irish citizens. All this was a build-up to the most profound change in Irish citizenship law which took effect in January 2005. In June 2004, Irish citizens voted overwhelmingly to repeal Article 9 of the Irish Constitution, which granted the right to citizenship to every child born in the Island of Ireland.

Since 1\textsuperscript{st} January 2005, the Irish law requires that for a child born in Ireland to have citizenship under \textit{ius soli} provision at least one of the parents must be an Irish citizen, British citizen, a child of a resident who has a permanent right to reside in Ireland, or a child of an immigrant who is residing for three of the last four years in the country prior to the child’s birth. It shows that despite the amendment of this law there is still \textit{ius soli} provision based on birth in the country different from naturalization.

Following this amendment, immigrants born in Ireland whose parents or parent are not citizens are eligible for citizenship on the basis of \textit{ius soli} if at least one of the parents “has during the period of four years immediately preceding the person’s birth, been a resident in the island of Ireland for a period of not less than three years.”\textsuperscript{139}

\textsuperscript{137} Since 2002 when applications for asylum in Ireland peaked to 11,634 applications, numbers of applications have been consistently falling. It is notable that in the year 2005 applications from Nigerian accounted for the highest number of applicants and for every year between 2000 and 2007, they have accounted for between 30 per cent and 40 per cent of total applications. (See, Triandafyllidou and Gropas, \textit{European Immigration}, 170).

\textsuperscript{138} \textit{Irish Constitution} Section 2.1 Article 2.

\textsuperscript{139} \textit{Irish Nationality and Citizenship Act}, 2004.
Further than *ius soli* provision, immigrants become citizens through the process of naturalization. Spouses of Irish citizens, who have met 'certain conditions,' and asylum applicants, who have attained refugee status can apply for naturalization after three years. Immigrants (excluding asylum seekers and students) who have legally resided in the country and have attained a reckonable five years are entitled to apply for naturalization. There is also a provision for applying for 'leave to remain' in the country indefinitely if an immigrant has lived in Ireland for eight years.

Looking at the Irish Immigration policy, despite the recent changes and amendments it is evident that, in the last few years, TCN immigrants from outside the EEA and other liberal developed states experience restrictiveness around entry and stay, as is the case in other EU countries. Though the Schengen states and other EU nations (like Ireland) that do not belong to Schengen maintain separate immigration systems, the crucial thing is that there is continuous co-operation among these EU states in imposing visa requirements on nationals of the same third countries. At the same time, there are similar co-operations in sanctioning those people who do not possess the required visa or travel documents. All these amount to the claim that there are concerted efforts among EU states, as well other developed states, to make migration of people from less developed states to the developed states exceedingly difficult.

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140 Spouses of Irish citizens and civil partners must meet these conditions before applying for naturalization: “you must be married to or in a recognised civil partnership with the Irish citizen for at least 3 years, you must have had a period of 1 year's continuous reckonable residence in the island of Ireland immediately before the date of your application, you must have been living on the island of Ireland for at least 2 of the 4 years before that year of continuous residence, Your marriage or civil partnership must be recognised as valid under Irish law, you and your spouse or civil partner must be living together as husband and wife or civil partners, you must be of full age, good character and intend to continue to live on the island of Ireland, you must have made a declaration of fidelity to the nation and loyalty to the State”. (See, “Becoming an Irish citizen through marriage or civil partnership,” accessed January 20, 2014. http://www.citizensinformation.ie/en/moving_country/irish_citizenship/becoming_an_irish_citizen_through_marriage.html; See also, “What is naturalisation and who can be naturalised?” accessed January 20, 2014, http://www.inis.gov.ie/en/INIS/Pages/WP11000014).

141 Triandafylidou and Gropas, *European Immigration*, 170-175.
Conclusion

This chapter has traced the historical development of immigration control in Europe. Migration of people has been part of human history; only in the comparatively recent years have states begun to really tighten their borders. The Westphalian conception of sovereign states has helped make nation states what they are today. In this conception, the unilateral authority of the state manifests itself in the border laws, as states unilaterally determine who can cross their borders. In the present regime of closed borders, states autonomously decide whom to admit without recourse to any other outside authority.

Despite the impact of globalization and the emergence of international projects like the EU and other regional cooperation organizations, there are still tendencies to raise the bar on immigration for some groups of people, particularly third country nationals from the global South. Though there are huge increases in global economic trade and capital fluidity, there are concerted efforts among developed nations to strengthen and fortify their borders. Liberal industrialized states tend to be working together more than ever, so as to maintain similar policy instruments chosen to control the movement of people from the global South to the global North.

This collaborative effort to tighten immigration is something evident among the developed countries, especially the EU, both in the Schengen zone and other collaborating countries like Ireland, as shown in this chapter. Crossing the borders in most cases requires visas and one’s nationality and the passport one hold determines the procedures before entry is granted.

European countries consistently have been heightening border policing in the bid to restrict movement of people from the developing world to the developed world. The recent
development of the idea of “Fortress Europe” has given rise to more restrictive common European immigration policies and the European Union has taken a number of steps to harmonize national immigration policies through different agreements like Schengen and the monitoring and policing of TCN immigration through the establishment of Frontex. Schengen countries and other EU countries outside Schengen, like Ireland, are relentlessly harmonizing border policies so as to have uniform procedures to limit migration of people from the global South.

These developments in immigration policy implicitly raise questions about the ethics of current border controls and practices. For example, as has been seen in this chapter, groups of people are being categorised and excluded on the basis of their country of origin; differential treatment is accorded to migrants depending on whether their origins are affluent or poor; and the discretionary nature of decision making raises worries over discrimination. Thus these immigration policies and border practices raise many ethical questions.

To enter into this debate, therefore, the next chapter will reveal and discuss the ethical grounds upon which these regimes of closed borders find their justification. As will be shown, these efforts are based on particularist, communitarian and nationalist understandings that moral obligations are first and foremost to pre-existing 'members' of groups and that strict borders are crucial for the survival of liberal states. It is on bases such as these that current exclusionary international border policies find their ethical justification, as will be outlined in chapter 2.
CHAPTER TWO

THE ETHICAL JUSTIFICATION OF ‘CLOSED’ BORDERS

Introduction

Developed nations, and their regional organisations such as the EU, ethically justify strict immigration principles on the ground that immigration restriction serves as a means of protecting the interests of members in “political communities”. This is based on the assumption that states possess a “unilateral right” to maintain and protect their bordered territories. Hence, they claim to have a moral entitlement to craft immigration policies and shape them according to their judgment. Because of their primary obligations to the “members”, they can justifiably do this irrespective of the needs of others who are “non-members” or do not belong to these “bounded territories”.

On this premise, it is morally acceptable that states can close their borders to all or some migrants if this serves the need of the community members or those who are natives. Such particularism, championed mostly by communitarians and nationalists, disagree with any attempt to develop universal moral vocabularies that includes those who are non-members. As a result, from these perspectives several strands of argument are offered which tend to justify the strict border policies of liberal developed states like those within the EU. These arguments revolve around the protection of the values of the liberal democratic states; namely welfare, economy, security and protection of democratic values, and culture. In this chapter each of these points will be presented and explored in turn in the light of communitarian concerns.


143 Richard Shapcott, Justice, Community and Dialogue in International Relations (Cambridge: Cambridge University Press, 2001), 32.
However, while it is a conventional and commonly held view to say that states have a right to "self-determination" and are morally free to allow anyone in at their own discretion, this view has been very much scrutinized and challenged. Critics argue that communitarian claims are sometimes not based on accurate information, resting on empirical claims which are sometimes more imaginary than real (e.g. about the negative impact of migration on economies). Moreover, such particularistic defence of borders is inherently exclusionary, limiting the conception of justice only to those within these bounded territories, thereby leaving many out of the moral equation. These criticisms will be raised towards the end of this chapter, leading into the discussion in Chapter Three of cosmopolitan alternatives which see open borders as instrumentally necessary for liberal equality and global justice.

2.1 The communitarian defence of borders

In the developed liberal states, it is increasingly apparent that "borders have guards and the guards have guns." Yet, armed border guards are only the most obvious way in which these states fortify their borders against unwanted immigrants. As Chapter One demonstrated there are a range of other ways, from visa controls to internal surveillance of migrants, which European states deploy. Rich nations see this practice as ethically defensible based on various 'communitarian', 'nationalist' or 'nativist' assumptions which in essence are all 'particularistic' in style.

From a particularist world view, the present world order is constituted by an array of sovereign states whose responsibilities are limited to those who are members within their territories. Thus particularistic assumptions that necessitate strict border restrictions find their ethical defence in communitarian ethics like Michael Walzer's, especially his idea about

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144 Walzer, *Spheres of Justice*, 62.
“membership”. A liberal nationalist like David Miller similarly points out that one of the features of nationality is that “it is an identity that embodies historical continuity” and the “historic national community is a community of obligation.” The fact that people belong to the same community or nation creates obligations towards one another and this obligation is a priority in relation to all other things. Hence, people are born to inherit this obligation which they continue to fulfil towards their contemporaries.

Consequently, people should be morally concerned with those who are “physically near” or “emotionally dear” to them, and this is considered to be legitimate by particularists. Individuals belong to communities and the communities to which they belong have the special responsibility to care for them because in Walzerian terms “distributive justice presupposes a bounded world within which distribution takes place.” Communities and nations will have the right to be left alone without intrusion; they can genuinely prevent other people from being part of them, such a right in communitarian terms is an essential requirement for justice.

Acquiring membership of any political community “is not pervasively subject to the constraints of justice.” The right of a sovereign state to close its border to foreigners is seen to be beyond the global justice discussion as those who are outside the boundaries do not share in the community’s “good” and can only share in it when they are allowed by those who are already members. Using America as an example, John Isbister similarly argues that,

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149 Ibid.
150 Ibid.
152 Walzer, *Spheres of Justice*, 31.
153 Ibid., 61.
If there is a reasonable possibility that immigration may hurt some U.S. citizens, therefore, Americans are justified in restricting entry, even though restrictions may violate the rights of foreigners. Americans should have more obligations to their fellow American citizens than they should have to other people. This conforms to the nationalists’ assumption that “national members are morally permitted, and in some cases morally required, to show partiality for their nation and their fellow nationals.” Those who are “members” have a shared national identity, an identity which involves “a strong sense of collective belonging characterized by a sense of relatedness and mutual exclusive sentiments of solidarity and sympathy.”

In Walzer’s work *Spheres of Justice: a Defence of Pluralism and Equality*, he provides an ethical defence of all existent borders of “exclusion”. His defence has often been seen as the *locus classicus* of “communitarian” arguments in contemporary times by those favouring border restrictions. In this view, communities deserve the moral right to arrange themselves in the way they want and lead their own different lives. Here, the “idea of a community might embrace a nation-state,” as a nation can be seen as a community of people. A community’s choice of life should not be interfered with, and there should not be any “undue influence from other people in their communities organized on different premises.”

In Walzer’s understanding, the idea of community is intertwined with justice; hence,

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156 Ibid., 560.
The idea of distributive justice presupposes a bounded world within which distribution takes place: a group of people committed to dividing, exchanging, and sharing social good first of all among themselves. In this understanding, countries are like clubs; they need only admit whoever they wish. The community’s decision on who can be their associate is impeccable. One can be admitted, and one can be excluded depending on what members would want. It is the members who define whom they are and who they can admit, but cannot be compelled to do so except under certain special circumstances.

It is only on such particularistic premises that states can efficiently fulfil their obligations towards members. Those who are members see themselves as bound together having particularistic allegiances towards one another, therefore, deserving the right to “membership restriction.” This means that they can exercise their moral right to exclude anyone from sharing in the community’s good through stringent immigration rules. Against this background, states feel they undeniably have the “right of exclusion”, they feel ethically justified in placing restrictions at their borders or closing it entirely depending on the interests of those who are members.

On this foundation, many other arguments in defence of the “bounded worlds” have been developed, and it is on these grounds that contemporary immigration policies of developed nations find their ethical underpinnings. With the needs and rights of the community to the fore, it is therefore argued that tight border controls are meant (i) to prevent welfare collapse and allow the exercise of special responsibility to compatriots; (ii) to protect national

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160 Walzer, Spheres of Justice, 31.
161 Ibid., 40.
162 Ibid., 41.
164 Walzer, Spheres of Justice, 31-63.
economies from collapse; (iii) to ensure public security of any nation and the protections of
democratic values and; (iv) to protect cultures from being submerged. These claims will each
be examined separately below.

2.1.1 Welfare Collapse and priority for compatriots

Liberal democratic states, such as those in the EU, are welfare states in one form and degree
or another and given the basic social protection this offers to all 'members', there is consensus
that much should be done to prevent these welfare systems from collapse. From a
particularist point of view, there is a belief that open immigration would be detrimental,
posing a threat to the state’s capacity to maintain the welfare system and thereby making it
susceptible to collapse.\textsuperscript{165} Therefore, through border restrictions, the welfare system can be
protected and preserved. In the absence of well protected borders, the welfare system
presumably will become porous; hence, the state might run the risk of failing in its capacity
“to fulfil putative special responsibilities to its own current citizens.”\textsuperscript{166}

Since it is the duty of the state to provide for its citizens, a porous immigration would create a
porous welfare system and this would make the state unable to provide the basic benefits for
its citizens. As a result, as Garrett Hardin has argued in his “life boat” ethics, it is better to
have fewer people on the boat and so prevent the boat from capsizing.\textsuperscript{167} Thus it will be
to restrict migration of people into welfare states so as to ensure the stability of welfare
for those who legitimately benefit from it rather than allow too many people, who eventually
would make the welfare system grind to a halt.

\textsuperscript{165}Robert Goodin, “If people were Money...” in \textit{Free Movement: Ethical Issues in the Transnational Migration
of People and Money}, eds. Brian Barry and Robert E. Goodin. (University Park, PA: Pennsylvania State
University Press, 1992).6-22, at p. 11

\textsuperscript{166}Arash Abizadeh, “Liberal Egalitarian Arguments for Closed Borders: Some Preliminary Critical Reflections”

In particularistic terms, this suggests that when we share resources we ought to prioritize those with whom we share certain relationship, like family, friends and nationality, and this is morally justified.\textsuperscript{168} Stemming from the view that there exists special responsibility for compatriots, it is expected that every person belongs to a community or nation where he or she should expect to be treated specially. Communitarians see ‘members’ as having special responsibility to one another since a state is a “community of obligation.”\textsuperscript{169} People are born to inherit these obligations which they continue to fulfil towards their compatriots.\textsuperscript{170} Members have a special duty to promote each other’s wellbeing.

In this understanding, special duties are duties we have to those “with whom we have had certain significant sorts of interactions or to whom we stand in certain significant sorts of relations.”\textsuperscript{171} As members have duties towards one another and to the state, the state equally has a duty to provide for those who are members. In general, associative duties are duties we owe to individuals with whom we have had some ‘significant interactions’ or to whom we stand in some ‘significant relations’.\textsuperscript{172}

In this way, liberal developed states on the receiving end of immigration see it as a moral right on the basis of “special responsibilities” to prioritize their own people and this can be done by placing restrictions on immigration. Today, liberal industrialized states tighten their borders on the ground that an open immigration would have devastating effects on the natives and might jeopardize the provision of welfare to the domestically worst off.\textsuperscript{173} The belief is

\textsuperscript{169} Miller, \textit{On Nationality}, 23.
\textsuperscript{170} Ibid.
\textsuperscript{171} Samuel Scheffler, \textit{Boundaries and Allegiances} (Oxford: Oxford University Press, 2001), 49.
\textsuperscript{172} Ibid. 49; Veit Bader, “Reasonable Impartiality and Priority for Compatriots; A Criticism of Liberal Nationalism’s Main Flaws,” \textit{Ethical Theory and Moral Practice}, 8, (2005): 83-103, at p. 86.
that either the welfare system would collapse in the midst of unrestricted migration, or it will be so strained that the state will be incapable of maintaining the system due to the uncontrolled number of recipients. Whether it collapses or is strained, the point is that welfare states feel justified to use border restrictions as a means of protecting the system from crumbling.

For example, Joseph Heath claims that the opening of borders might put lifelong welfare schemes into serious risks or "exploitation." The risk and exploitation would arise when natives who have contributed in their life-times to such schemes might be in danger of losing out due to the growth in the number of would-be beneficiaries, who may not have contributed much to the schemes. In this sense, opening the borders would be unfair to native citizens who have worked hard in their life times to contribute to social welfare. Their life-time contributions would be susceptible to exploitation by immigrants who presumably will be "spongers", only benefitting from the welfare state without contributing much.

Many might see the case of special responsibility as appealing to "common sense morality," on the ground that it is a common assumption that closing the borders allows the state to fulfil special duties towards compatriots who are believed to be entitled to special consideration. Furthermore, it is not just about states’ responsibility to citizens, it is also about responsibilities of citizens towards each other. This means that the interests of fellow compatriots towards one another always should override the interest of strangers.

Today’s immigration laws in the developed worlds are aimed at protecting these shared responsibilities towards citizens, as such, one justification given for immigration policies aimed at preventing movement particularly from the global South is to prevent the

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175 Ibid.
176 Abizadeh and Gilabert, "Is There a Genuine Tension," 349.
destabilization of the social systems in the global North. Given the vastly different wealth and standards of living between the global North and global South, the fear is that open borders would lead to huge demands being placed on the welfare regimes of the North by large number of poorer migrants. Borders today are closely maintained, on the grounds that the welfare system must not be endangered, and at the same time, the fulfilment of the special responsibility which the state has to its members and responsibilities which members have towards one another, should not be put in jeopardy.

2.1.2. Economic stability needs closed borders.

Further support for the particularist argument comes from those who caution against the economic impact of unregulated migration. From this perspective, liberal developed states see open borders with less developed nations as something detrimental to their national economies. They fear that when borders are left open, a great number of poor immigrants from less developed nations could trigger a collapse of the domestic economy of any industrialized nation and this in turn could lead to the crumbling of other developed nations economically.¹⁷⁷

This assumption has tremendously influenced current immigration policies of states as there is the fear that mass movement of poor immigrants has the potential to collapse national economies, dragging down everyone into impoverishment. Generally, in many societies, migrants can easily be viewed negatively because of the economic costs they may impose on the state or because of their social behaviour.¹⁷⁸ Undoubtedly, a good number of natives perceive migrants as constituting an economic burden; such a burden is felt by the straining of housing, educational and transportation facilities.¹⁷⁹

¹⁷⁷ Isbister, "A Liberal Argument for Border Controls: Reply to Carens," 630.
¹⁷⁸ Weiner, The Global Migration Crisis, 142.
¹⁷⁹ Ibid.
If the opening of borders would send national economies crashing, no state would want to see its economy ruined due to reckless immigration policies. States do have a duty to adopt policies that eventually could lead to the strengthening of national economies, "no state has a duty to adopt policies leading to the collapse of its economy."\(^\text{180}\) If it is certain that opening of borders would lead to a collapse of any national economy, it might be justified for prosperous nations to close their borders to avert making everyone worse off.

If national economies of developed nations collapse because of the influx of immigrants, natives who have been enjoying the economic stability of their countries and have worked hard for it would begin to suffer while immigrants in search of better lives would in no way find something better. Just as with the argument for the protection of the welfare system, which presents immigrants as 'suckers' or exploitative,\(^\text{181}\) it is not very clear how great a number of immigrants has the potential to bring down any national economy or welfare system. Nevertheless, if migrants can cause some economic strain to a nation when borders are in check, the strain presumably may be more severe when borders are left open and unchecked. Wherever migrants or refugees are concentrated in large numbers, the infrastructure cost for the community with respect to school, public transportation, health services etc. will likely be high.\(^\text{182}\)

In many states and local communities, migrants are often regarded as competitors for government resources. City councils provide basic amenities, but when these cities are filled to the brim with many people more than is sustainable, it can become a Herculean task for the city councils to provide services for the great multitudes. Seeing migrants as economic


\(^{182}\) Weiner, The Global Migration Crisis, 142.
burden is something common, both in the developed and less-developed countries. In some cases, as it has been evident in less developed countries, migrants like refugees or pastoralists can be economically burdensome to the state especially when they are jobless.

One of the major problems associated with open immigration is the claim by immigration restrictionists that free immigration would be economically detrimental because it threatens native jobs and wages. Open borders would bring too much labour competition, undercut wages and render the weak, impoverished citizens weaker in the labour market. This will bring more competition for the natives, and this is based on the assumption that immigrants are perfect substitutes for natives in the job market. In another way, open immigration will bring in too much competition to the extent that less-skilled natives would pay the price more as they are likely to lose out in the midst of stiff competition in the job market, even though skilled natives might be gaining. Once again, but this time in economic terms, special responsibilities to citizens – and especially the economically most vulnerable – provide ethical justification for the closure of borders.

2.1.3 Public security and the protection of democratic values

One of the advanced arguments in the present international order justifying border restrictions is that borders should be closed for the sake of “public order and social stability.” This sounds particularly convincing in the modern day where liberal democratic states have been

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183 In less developed nations especially in contexts of incessant wars and communal clashes refugees may illegally occupy private or government lands; their goats, sheep and cattle may decimate forests and grazing land; and they may use firewood, consume water, produce waste, and in other ways come to be regarded as an ecological threat. By doing these, the host nation ends up with a whole lot of economic loss and environmental degradation. (Ibid p. 142).


185 Ibid, 1368.


constantly threatened by fundamentalists of opposing ideologies. States see public order as a necessity; it is needed to guarantee the protection of the civil rights of citizens.

The belief is that when liberal developed nations leave their borders unguarded, "the number of those coming might overwhelm the capacity of the society to cope." This inability to cope can eventually lead to "chaos and a breakdown of public order." When borders remain open, there is the danger of a "deluge" of immigrants "swamping" the state and posing a threat to public order and social stability. This assumption has proved to be so popular and socially accepted because of its security orientation. Security in our present world has become of primary concern as liberal states, which have become terrorists' targets consistently, reformulate their border policies in order to keep them ever tight.

Whether or not we accept the "clash of civilizations" thesis, many who have embraced fundamentalists' ideologies threaten the status quo in the Western societies and the reality of the threat to public order has been more evident since September 11th and subsequent attacks. As a result, there is particularly a stereotyping of immigrants – particularly those from the non-Western world – as many are seen to be 'potential terrorists'. As a result, it is possible that these 'potential terrorists' could find their way into liberal states to cause mayhem and the destruction of innocent lives. Moreover, since some migrants may have a history of violence in their native countries, there is the fear of dangerous criminals migrating to foreign lands unnoticed. They may migrate with the intention of causing more harm to

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189 Ibid.

190 There is the fear that uncontrolled immigration will put the security of natives including immigrants at risk, security is something so important considering the threats to innocent lives in the last few years.

191 In a classic article, Samuel Huntington argued that the great division among human humankind and the dominating source of conflict will be a clash of cultural ideologies. States with different civilizations will go into conflict as they vie for control of international institutions and for economic and military power. This depicts the inherent tension in our present world. (Samuel Huntington, "The Clash of Civilization," Foreign Affairs, 72, no.3 (1993):22-49; also, Samuel Huntington, The Clash of Civilization and Remaking of World Order, New York: Simon and Schuster, 1996).
others, this makes state authorities tighten their borders in order to protect the rights of members, whose interests are of primary importance.

Therefore, people consent to the idea that it is the duty of governments to protect their territory and population against any threat to social stability. A further concern that immigration threatens social stability and public order arises when people see the possibility of a state losing its ethnic balance or migrants generating some sorts of social or political upheaval due to their large numbers.

In today’s international arrangement there is the assumption that border restrictions are necessary for the survival of democratic institutions. This is based on the fact that the state has to do all it can in keeping out those with “subversive political intentions,” because failure to do so most likely will lead to the demise of democratic values. Furthermore, an open border would let in people who are “fundamentally anti-liberal in outlook, and whose presence would threaten the survival of domestic liberal democratic institutions.”

This argument assumes that tight borders are needed to keep out those whose presence would be a threat to other people’s liberty and values. Democracy as an association of citizens is set up by the people for the benefit of all who are “members”, and therefore, this would favour any restriction on those whose presence would trample democratic values. Liberal democratic states are like associations of citizens, a “club membership” in Walzer’s terms, which cannot afford to welcome those who are threats to members. Therefore, “present members have the right to determine who can be future members.” As a result, one can be excluded from being a member of any democratic institution if one’s presence can be a threat to the freedom of others or to the institution itself.

193 Ibid.
194 Walzer, Spheres of Justice, 35.
For example, from an American perspective, John Isbister argues that when immigration is not restricted "it might destroy institutions or values in the U.S. that are of transcendent importance." Democratic institutions should have overriding importance over any advantage attached to open immigration. Not just that, open immigration eventually "might destroy something that is vital not only to Americans, but also to foreigners and potential immigrants."

Since there can be possible threats to public order and liberal democratic values, restrictions on immigration are seen to be morally justified because, from the point of view of "liberty" and "welfare", an unregulated immigration regime makes everyone worse off. Public order is important for the existence of the community of nations, no one would want to migrate to a country in a state of disintegration and chaos, even migrants who are presumed to benefit from states opening their borders would want to go to a peaceful and secure country where life options would be enhanced.

2.1.4 Closed borders protect cultural identity

Much of contemporary discussion on immigration issues favours the protection of a community’s culture, and this discussion has consistently been part of the ethical justification of restrictive border and immigration policies. There are varieties of arguments vehemently supporting the protection of cultural and national identities. It is argued that culture provides people with "access to a range of meaningful options," therefore must be protected in every way, even if it means that a political community has to exclude those whose presence could lead to the demise of these options.

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195 Isbister, "Are Immigration Controls Ethical?", 90.
196 Ibid.
197 Ibid; see also, Weiner, The Global Migration Crisis, 179.
According to Kymlicka's conceptualization, “meaningful options” are the context of choice that an individual is faced with. In this way of thinking, a people’s cultural context is regarded as a “basic good” as it enables community members to judge the value of life-plans. The erosion or distortion of any culture renders the individuals or group who share in it incapable of making correct life choices thereby limiting their choices in life.

It is believed that when borders are left open, immigrants from different cultural backgrounds might enter in large numbers, reducing local inhabitants to “demographic minorities and threatening their culture and political dominance.” Hence, opening borders will make native cultures vulnerable as they will be very much susceptible to being swallowed up by immigrant cultures. In this understanding, cultural and national identities are so important for identity of members that they need more protection through the tightening of borders. Therefore, states ethically feel justified when they invent immigration policies that are meant to be protective of cultures.

The presence of foreigners in a large number is always perceived as a threat to the capacity of the liberal state in initiating “socio-political integration”. This argument is applicable to every form of culture, whether a culture is in the minority or majority; there is the assumption that it should be protected from being eclipsed by any other alien culture which could result from an influx of foreigners.

To protect cultures from being submerged, David Miller argues that natives should have the power to direct and shape their culture in the way they want. In this sense, they are entitled to preserve their culture and determine who should be accepted to share in it or who should

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199 Ibid., 95-96.
201 Weiner, The Global Migration Crisis, 182.
202 This is the argument that has been presented by Will Kymlicka in his article “Territorial boundaries: A liberal Egalitarian Perspective,” published in Boundaries and Justice: Diverse Ethical Perspectives, ed. David Miller and Sohail H. Hashmi (Princeton, NJ: Princeton University Press, 2001), 249-275.
be rejected. They are entitled to make legislation on immigration policies as it will suit them based on their ‘cultures’, ‘histories’, ‘interests’ or ‘desires’.

Against this background, when a culture is eroded or submerged it means some people are being robbed of something which is very valuable, an embodiment of their life choices. Whether natives are in the minority or the majority, particularists’ arguments present culture as something that needs protection; governments are seen to be justified in taking protective measures through stringent immigration controls. This measure could be a clampdown on immigration or “cherry-picking” of immigrants, by giving more opportunity to immigrants who are considered to be in proximity to the receiving culture than others.

Individuals are expected to be provided with life options by their own cultures or states, and, the need to look for options of life outside one’s state, culture or environment should not impose any obligation on another state, as the state is not responsible for the well-being of foreigners. This means that from particularist perspectives, migration to enhance one’s life will be of lesser importance than the interest to protect community culture and the interest of members. Hence, any effort by a state to restrict immigration so as to give natives more life options in their cultural context will be seen as ethically justified.

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204 Meilaender, Towards a Theory of Immigration, 1.
205 When ethnic immigrants migrate, it is taken for granted that they have chosen to leave their own background, they “have uprooted themselves” from their cultural background and their success in their new found nation will have to depend on their “integration in their new found institutions” whether the natives are in the majority or in the minority, they should not be denied their “cultural context” as they have not chosen to move away from it. (See, Kymlicka, Multicultural Citizenship, 95-96); (see also Heath, “Immigration, Multiculturalism and the Social Contract,” 350).
2.2 Should borders be ‘closed’? Possible objections to the arguments supporting restrictive immigration policies

Although states, such as those in the European Union, justify their immigration policies based on the various reason that have been previously outlined, it has to be said that some of these arguments are seen, from some quarters, to be founded upon claims which are both empirically unestablished and ethically questionable. Even though particularist arguments have their own moral coherence and weight (a point that will later be emphasized in the next chapter and in the last chapter), they often underpin highly exclusionary border politics, and this raises doubts as to whether they provide a satisfactory moral compass for the serious questions regarding how immigrants who are regarded as ‘non-members’ or ‘strangers’ ought to be treated.

A fundamental point for those who argue against the ethics of particularism is that what we ought to do as “moral persons” cannot be limited to those who belong with us to the same community or nation. It is quite possible to think that our moral obligations end at the borders, but it is also possible to think otherwise – that some obligations transcend community/national borders on the ground of common humanity. The ethical grounding of such, cosmopolitan arguments, will be explored in the next chapter. This chapter ends however with a discussion of whether the economic and political claims covered above, about the necessity of closed borders, which translate particularly into closing borders to migrants from the global South, stand up to empirical scrutiny.
2.2.1 Will immigration threaten welfare and restrict putative special responsibilities?

As outlined above, there are assumptions that open borders would make states’ welfare systems susceptible to collapse.\(^\text{206}\) Migrants are seen to cost the taxpayer heavily as they become part of the welfare systems or part of the asylum processes.\(^\text{207}\) On these bases, a state feels justified to close its borders because the state should have a duty to provide welfare for its current citizens, who have paid into the system through their taxes.\(^\text{208}\)

On one hand, it is debatable to assume that justice requires social benefits to be distributed only to those who have made adequate contributions. Despite the strength of this argument, it does not fully accommodate the fact that we need to be fair to those unable to make welfare contributions, whether they are natives or migrants. Justice requires extending benefits to persons in dire need, even if they have not been able to make any earlier contribution for the sustenance of the welfare system.\(^\text{209}\) There are those in the welfare states who are either poor or jobless and simply cannot contribute, but they are still looked after by the system in various ways.

Moreover, since most immigrants do find work and should be made to pay their taxes,\(^\text{210}\) thereby contributing immensely to the welfare system, it is a false assumption to classify all of them as "spongers". The need to protect welfare of the citizens against the added demands of immigrants is not therefore entirely convincing. However, it is the case that welfare systems across Europe are under intense pressure after years of changing policies on welfare, cut-backs and austerity and emerging issues such as ageing populations and ever increasing

\(^{206}\) Goodin, "If people were Money," 11.


demands on health and education systems etc. Therefore the need to protect welfare systems cannot be entirely dismissed and becomes part of a credible argument in defence of immigration restrictions to which I will return in chapter 3.

2.2.2 Will a more open immigration be a threat to national economies?

Closed border arguments based on the fears of “economic crash” as a result of open immigration are arguably highly exaggerated. Indeed there are those who make the case that migration is a boon to economies. Some economists, like Howard Chang, argue that “labour migration represents a form of international trade.” In such a trade, when labour is exported by foreign suppliers, both the domestic buyer and the seller gain from the trade. This means that labour is traded as goods are traded in the international market, migration supplies labour to the host countries who are the domestic buyers, giving both the sending and receiving countries gains from the trade, as well as improving the lives of the migrant workers. When liberal states raise immigration barriers,

[They interfere with the free flow of labour internationally and thereby cause wage rates for the same class of labour to diverge widely among different countries.]

This means that when immigration barriers are in place, international labour migration is hindered and this does not make economic sense. Rather, residents of countries with high wages would stand to gain when they allow more immigrants in for labour.

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211 Howard Chang, The Disadvantages of Immigration Restriction as a Policy to Improve Income Distribution" 28.
212 Ibid.
In contrast, as shown in the last section, immigration restrictionists believe that open immigration threatens native jobs and wages.\textsuperscript{214} In recent years however, the international community has successfully removed trade barriers in the belief that market freedom gives everyone the opportunity to gain economically. In the same vein, it should be acknowledged that migration, like trade in goods and services, can lead to “an optimal allocation of productive resources and is welfare improving.”\textsuperscript{215} Migrant workers in foreign lands pay taxes and contribute immensely to the welfare system; part of what they earn is spent in the economy of the host nation while some of it goes back to their countries of origin as remittances. In other words, they are highly contributive to the growth of the economy of their host nations.

Various studies on the impact of immigration on international economy show that “the gains to the world economy from removing immigration barriers could well be enormous and greatly exceed the gains from removing trade barriers.”\textsuperscript{216} International movements of people are economically advantageous in most cases even though in some cases there could be an economic loss on the part of the natives of receiving countries, or even the sending countries due to “brain drain.”\textsuperscript{217} But, such losses cannot outweigh the overall economic gain from migration. Empirical studies reveal that migration increases the average per capita income in both sending and receiving countries as long as it involves the reallocation of labour, moving labour from where it is surplus or abundant to where it is needed more.\textsuperscript{218}

\textsuperscript{214} George J. Borjas, “The Labour Demand Curve is Downward Sloping”.


\textsuperscript{216}Chang, “Liberalized Immigration as Free Trade,” 1148.

\textsuperscript{217} The emigration of skilled professionals to developed economies is often seen as a loss to the sending countries, hence the term ‘brain drain’. There is a fear of the negative consequences of the loss of skilled people in the less developed countries.

\textsuperscript{218} Straubhaar, “Why do we need a General Agreement,” 129.
When a state restricts immigration it imposes cost by driving up the cost of labour and such a rise in the cost of labour eventually drives up the cost of goods and services to the consumers. In this scenario, though natives gain by earning high wages it is at the expense of their employers and themselves as consumers.\textsuperscript{219} In other words, "immigration restriction not only redistributes wealth among natives, it also destroys wealth by causing economic distortions."\textsuperscript{220} With immigration restrictions, employers are not able to hire immigrant labour where it is abundant, even if they are economically able to do so. A restriction on the free flow of labour causes "misallocation of labour among countries, thereby wasting human resources, and, creating unnecessary poverty in labour abundant countries."\textsuperscript{221}

Labour migration is basically important for world economic growth. The 1992 UNDP report shows that yearly migration of only 2 percent of the labour force from developing countries to the industrialized nations yielded a total annual income of about $220 billion. World Bank statistics show that an increase in migration of people from developing countries to developed countries with high income earning will increase the labour force in the receiving countries by three percent by the year 2025.\textsuperscript{222} Using World Bank statistics Howard Chang estimates that the result of such a free labour market will be positive for global welfare and will bring about an increase in the world’s real income by $356 billion in 2025. In this way, both host and sending countries will record huge economic gains.\textsuperscript{223}

The idea that more immigrants cause unemployment seems to contradict what historically has been the case. It is evident that there was more unemployment in 1930s when there was low

\textsuperscript{219} Chang, "Liberalized Immigration as Free Trade," 1152.
\textsuperscript{220} Ibid.
\textsuperscript{221} Chang, "The Disadvantages of Immigration Restriction," 24.
\textsuperscript{223} Chang, "The Disadvantages of Immigration Restrictions," 27.
immigration than the present time where there has been high rate of immigration. Of importance is the fact that it is not the presence of immigrants that causes unemployment, because, in most cases the jobs which immigrants take are jobs shunned by natives. In the labour market immigrants and natives should not be seen as “perfect substitutes”, in other words, they do not often compete for the same jobs. This means that labour markets are “highly segregated” and therefore some of the immigrant labour will be “complementing” rather than “substituting”. The fact that immigrants take these jobs that are shunned by natives becomes positive for any economy, as they “provide an essential means of enabling economies to function and expand”. On the part of the sending countries, the economic importance of migration goes well beyond remittances, which are often seen as the main source of gain. In a broader perspective, migration creates more opportunity for trade links and broader exchanges of financial, human and social capital. When migrants are free to move to other nations, they stand a better chance of making business connections which in turn is good for their home countries. Therefore, there are genuine reasons to see international migration as a phenomenon that is economically positive. Rather than economic crash, free migration “generates the same

225 Teresa Hayter has shown that some countries with high levels of immigration tend to have very low rates of unemployment while the reverse is the case with countries with low levels of immigration. (Ibid. pp. 158-159).
226 Ibid., 159.
227 Borjas, “The Labour Demand Curve is Downward Sloping,” 1360.
229 Hayter, Open Border, 159.
such positive results as trade in goods and services or a free flow of capital.” Therefore, present immigration policies ought to be based on the fact that immigration of people is not something that is destructive of national economies; rather, migration in very many ways can strengthen national and international economies.

2.2.3 Will closed borders ensure security?

The idea that an open immigration policy might lead to a breakdown of public order and security is often put forward as a credible argument for enhancing border security. However, it is helpful to make a distinction between “real and reasonably perceived threats” on the one hand and “paranoid notions of threat or mass anxieties” on the other. Stereotyping all migrants as ‘potential terrorists’ seems a symptom of such ‘mass anxiety’, which neglects the historic realities of ‘home-grown’ terrorism inside Europe, as well as unjustly stereotyping a diverse group of people. To be fearful of all migrants as threats to security is absolutely unnecessary even if there is a possibility of very few individuals being a threat to public order. Even at that, developed states are capable of handling such threats within their states rather than stereotyping immigrants.

Today, streets and corners in the developed world are protected by cameras and crime detection has been very successful in Europe and America which suggests that a threat to public order and security can adequately be tackled. European security and maintenance of public order has been excellent bearing in mind that although EU borders are open to

232 Ibid.
233 Ibid.
European citizens, they still have a way of maintaining security and public order without interfering with the flow of migration of European citizens.

Therefore, using the argument that ‘migrants are a threat to public order and security’ as a reason to ‘close’ borders is found wanting, especially when this argument categorizes all migrants as threats, which in no way is the reality. However, like the preservation of welfare and special responsibility arguments, security is something important to everyone and should be considered a credible argument when considering what degree of restriction is ethically permissible at the EU borders. It becomes important to identify an analytical stance which neither dismisses all security or public order fears as xenophobic, nor regard all anxieties over immigration of people as justification for exclusion.234

2.2.4. Will migration of people be destructive of community culture?

There are convincing objections to the assumption that unregulated immigration would make a people’s valued culture submerge or erode. As outlined above, the argument is premised on the idea that there is ‘a cultural context’ which gives people meaning. Yet, such an argument is immediately problematical when we consider the fact that most states today are already multi-ethnic and multicultural, 235 where many people manage to share and live together within the nation-state.

Another argument justifying the exclusion of immigrants on the basis of cultural protection emphasizes the importance of “stability”. For a state to be stable, immigration restrictionists presume that states are entitled to control immigration to prevent citizens from being


“swamped” by foreign influences.\textsuperscript{236} Basically, the assumption is that cultural homogeneity is crucial for preserving “social stability” and “cohesiveness”, which in turn are important for putting “political stability” in place. In the developed nations, such arguments have often been invoked in “inappropriate” manner by politicians in the bid to clamp down on migrants.\textsuperscript{237} Such an argument in its strict form would mean that social and political stability depend on cultural homogeneity, and this is empirically not true.\textsuperscript{238}

Michael Dummett points out that the only people in our modern times who face such a danger of being submerged are those ruled by colonial governments, and by states that have illegally annexed their territories.\textsuperscript{239} In other words, an ordinary process of immigration, which does not use any coercive power, is very unlikely to lead to a group of people being submerged, as immigration is not designed to bring such effect.\textsuperscript{240} A gradual influx of people of a distinct culture cannot pose a great threat to a native culture since the immigrants will in large part assimilate the manners of their new home.\textsuperscript{241} Moreover, it is not a proven fact that cultural homogeneity is a prerequisite for the stability of any nation. Political or social stability needs neither homogeneity nor preservation of a dominant culture; rather, it would require some measure of “cultural continuity,”\textsuperscript{242} which an open immigration would in no way distort.

\textsuperscript{236} Ibid., 111-112.
\textsuperscript{237} Michael Dummett, \textit{On Immigration and Refugees} (London: Routledge, 2001),20-21. Dummett points out that when we discuss how justice bears on matters of immigration, we must acknowledge the right of every people not to be submerged. We must also reject the mendacious use, in circumstances in which it is entirely inappropriate, of the emotive concept of being swamped, in order to deny the just desires of would-be immigrants and refugees.
\textsuperscript{238} Perry, “Immigration, Justice, and Culture,” 113.
\textsuperscript{239} Dummett, \textit{On Immigration and Refugees}, 51.
\textsuperscript{240} Ibid.
\textsuperscript{241} “In no case will a gradual influx of people of distinct culture threaten a native culture, even if, over the very long run, the influx amounts to quite large numbers. The danger of submergence occurs only when the immigrants arrive in a short time in such large numbers that they see no need to assimilate”( Ibid., 52).
\textsuperscript{242} Perry, “Immigration, Justice, and Culture,” 114.
The fact is that cultures change over time and if cultures change over time, the normative authority that lends support to the right of exclusion becomes questionable. Cultures are not like paintings which are framed and preserved to remain the same.\textsuperscript{243} Cultures evolve, the way things are done today could undergo a lot of transformation in a few decades to come. Therefore, holding unto the preservation of culture as if it is something stable and homogeneous is not a credible reason to clamp down on immigration. One might even rightly say that an open immigration might open an avenue for cultural enrichments, which eventually might provide more life choices.\textsuperscript{244}

**Conclusion**

Contemporary border policies of developed nations lean upon particularistic justification. States have the right of discretion in controlling who crosses their borders and this has to be done according to the needs of 'members'. This concomitantly implies that borders can be closed completely if the members permit it or if such a closure would be in the interests of the state or community. It has been shown that arguments for closed borders are meant to protect the interest of political communities. The interests of members, it is assumed, override any other claim by those outside the bounded communities.

While it is the case that particularists' concerns cannot be neglected entirely, since the community and its institutions can have value and ought to be protected, whether these communitarian concerns as expounded in this chapter justify the exclusive nature of current

\textsuperscript{243} Seglow, “The Ethics of Immigration,” 322.

\textsuperscript{244} There are more objections concerning cultures being eroded by immigration of people. Some authors have questioned the possibility of a complete erosion of ones' culture which is assumed by immigration sceptics. Alan Patten argues that cultural change may only be a risk to one's autonomy if the culture that provided someone with valuable options is completely eroded and the individual becomes totally unable to assimilate whatever culture that replaces it, in the sense that the person is unable to see the new cultural options as having value. It is only in such case that we can think of cultural erosion; however such situations are uncommon. (See, Alan Patten, “The Autonomy Argument for Liberal Nationalism,” *Nations and Nationalism*, 5, no.1, 1999): 8-11.
border practices is something quite arguable. Communitarian, nationalist and all 'nativist' arguments used to justify the exclusion of people at the borders are often based on refutable claims. As has been shown, such claims in political or economic rhetoric tend to be more imaginary or exaggerated than real.

Rather than the feared economic crash which open immigration would trigger, it has been contended that the world may stand to gain when there is free transfer of labour from where it is surplus to where it is needed most. Even when some people lose in some aspects, the global economic net gain would be huge for the world in general to offset what is lost. Why then should immigration be restricted on the ground of a 'feared' economic crash?

In addition, it has been shown that although many people might see the welfare argument as convincing enough to clamp down on immigration, immigrants can equally be contributors to the welfare system. More so, industrialized nations are capable of absorbing more migrants than they already do without the collapse of the welfare system. It has also been shown that though culture is important, arguments for closed borders based on the protection of cultures lose their ground when we consider the fact that cultural homogeneity is not a pre-requisite for the stability of states.

Considering what is factually given, these arguments offered in justification to closed borders appear unsatisfactory; they tend to be more imaginary than a reflection of the reality on the ground. While the focus in the latter part of this chapter has been on criticising the empirical and political assumptions which particularists use in elaborating their arguments, for the purpose of my argument it is also necessary to turn critical attention back to the ethical underpinnings. Is the "exclusionism" that is apparent in liberal developed states' borders ethically tenable? Most critically, are our moral obligations bounded by our special or associate duties to immediate communities? It is to these critiques and subsequent
cosmopolitan arguments for open borders on the grounds that liberal societies should value freedom and equality for all moral persons, that the next chapter turns.
CHAPTER THREE

MAKING A CASE FOR MORE OPEN BORDERS: FROM COSMOPOLITAN ARGUMENTS TO CONSEQUENTIALIST COMOPOLITANISM.

Introduction

The opening chapter of this thesis depicted the highly restrictive and selective migration regime which TCNs who require visas encounter when seeking to migrate and the second chapter explored the ethical rationalisation of these policies from communitarian standpoints. As that chapter closed, weaknesses in some of the claims made by ‘particularists’ were uncovered. This chapter furthers this critique by discussing the ethical counterpoint to communitarianism, cosmopolitanism.

The essence of cosmopolitanism is the idea of equal moral worth of human persons, i.e. that all human beings have equal moral worth irrespective of their citizenship. On this premise, there are a range of ethical arguments made by liberal thinkers with cosmopolitan intent who argue for open borders on the ground of common humanity, freedom, equality and social justice. Cosmopolitan scholars fundamentally disagree with communitarian’s premise that moral obligations are bounded, arguing instead we have moral obligations to all humanity. Cosmopolitanism places ethical obligation beyond the established borders since what we ought to do as “moral persons” cannot be limited to those who belong with us to the same

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community or nation. Against the background of the Rawlsian conception of justice, which suggests that under the veil of ignorance, in 'the original position', everyone would value open borders, some cosmopolitans argue that immigration of people should be a basic right. Other cosmopolitans argue for global distributive justice which would require that everyone be equally treated, and given equal opportunities to choose life options.

This chapter begins by outlining and finding ethical merit in these cosmopolitan arguments. However, it must be conceded that some communitarian arguments for border control have their merits and can be said to be morally legitimate. In particular arguments concerning the value of bounded communities, particularly in order to ensure welfare and security, as debated in the previous chapter, are quite crucial for the ordering of human society. Acknowledging these arguments is suggestive of why a middle position between the poles of complete border openness and highly restrictive border regime is important to find. I will suggest therefore that consequentialist cosmopolitanism offers a balance between the extreme versions of communitarianism and cosmopolitanism.

Consequentialist cosmopolitanism is an agent-relative theory of the good which is dependent on the “unique capability” of agents to choose their preferred life options. It can be distinguished from other theories of justice by its fundamental epistemological consideration concerning the limitation on interpersonal comparisons of utility. The individual capacity to choose freely between different life options is taken to be the most viable indicator of human well-being. Though migrants should have a cosmopolitan right to choose, their rights to freedom of movement have to be balanced against a prima facie equally valid right of original residents to preserve their societal political project. Therefore this chapter will close by arguing in favour of a consequentialist cosmopolitan border ethic as a means to ensure that the rights of migrants and of original residents will be balanced in a way that does not diminish the moral importance of either.
3.1. Understanding cosmopolitanism: Historical development of cosmopolitan thinking

Cosmopolitanism can best be understood by looking at how it has been conceived and expressed in the classical period, the enlightenment and in the contemporary period. In its classical formulation, the term ‘cosmopolitan’ is from the Greek compound term Kosmopolites, literally meaning citizen of the Kosmos (universe). In various degrees, a vision of cosmopolitan world order has been expressed in history by diverse theorists like Democritus, Antiphon, Diogenes, the Cyrenaics, Epicureans, and the Stoics like Cicero, Seneca and Marcus Aurelius.

As early as 4th century BC Diogenes of Sinope (400-323 BC) is known to have expressed what many people today see as a true representation of “cosmopolitan sensibility.” When asked of where he came from Diogenes is reported to have said; “I am a citizen of the world.” Diogenes’ vision of the world in various ways influenced his fellow Cynics and other Stoics like Zeno of Citium, Chrysippus of Soloi, Marcus Tullius Cicero, Seneca, Epictetus and Marcus Aurelius. Ancient cosmopolitanism conceived the world as a “rational ordered whole,” in this whole, the logos is embedded in the universe thus making humanity and the universe to be one. Humanity and the universe become inseparable as they are ever entangled as a ‘cosmic whole’.

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250 It is also suggested that Socrates predates Diogenes as the first classical thinker to identify himself as a ‘world citizen,’ (Hayden, Cosmopolitan Global Politics, 12)
251 Rengger, 321.
252 Ibid.
Therefore, the basic conception of classical cosmopolitanism is that individuals are ‘citizens of the world,’ each person owes a duty to the global community of humanity.\textsuperscript{253} Stoic philosophy presents human persons as possessing equal moral status, because for the Stoics “humanity forms a single community.”\textsuperscript{254} Although ancient cosmopolitanism placed each human person on the same moral status, such cosmopolitanism remained only an “ethical world view” as it failed in offering a “concrete conception” of how the political community has to be organized in a cosmopolitan world order.\textsuperscript{255}

Through the enlightenment and modern period there are traces of some cosmopolitan ideologies but it is in the work of Immanuel Kant that cosmopolitanism gained some ground. It is in Kant’s writings that cosmopolitanism was seriously conceived and applied to global politics. It is the unification of Kant’s moral, legal and political philosophies that strongly elevates the cosmopolitan tradition “from a basic ethical sensibility (as seen in the Stoics) to a genuinely global political project.”\textsuperscript{256} In Kant, there was a leap from ancient cosmopolitan ‘world view’, as seen in the Stoics, to a much more realizable cosmopolitan international order.

Kant’s ideas of organizing the world in a way that protects the interests and rights of every human being encompass three overlapping components of public law, namely; municipal or civil law -\textit{ius civitatis}, international law or the law of nations -\textit{ius gentium}, and cosmopolitan law -\textit{ius cosmopoliticum}.\textsuperscript{257} In this understanding, cosmopolitan law is an aspect of public law “concerned with the status of individuals across international boundaries.”\textsuperscript{258} Here Kant

\textsuperscript{253} Held, 40
\textsuperscript{254} Hayden, 15
\textsuperscript{255} Ibid.
\textsuperscript{256} Ibid., 17
\textsuperscript{258} Hayden, 22
talks about universal hospitality based on his conception of humanity's 'common ownership of the earth.'

Kant proposed that nations should enter into peaceful mutual relations, these relations should be regulated by public laws, and this should bring the human race nearer to a "cosmopolitan constitution." His conception of the cosmopolitan law "embodies the universalism of his moral theory while seeking the formal codification of individual's fundamental rights irrespective of their citizenship or religious beliefs." Thus Kantian cosmopolitanism shows his rigorous integration of his ideas in moral, legal and political philosophies so as to demonstrate that there has to be respect for human dignity as vividly echoed in the categorical imperative. For Kant the categorical imperative holds that one should act so that the maxim of his action could by his will be a universal law. It implies we have to 'universalize' our moral judgements, and apply these moral judgements to everyone.

From this Kantian perspective, for human dignity to be respected, there is a requirement of both a just "domestic sphere" and a just "world order" which are regulated by international and cosmopolitan laws. For Kant, the cosmopolitan right which individuals should have transcends the particular claims of states, it connotes the rights and duty which must be accepted if people are to tolerate each other and coexist in peace. It is on the basis of the cosmopolitan right, which complements other national and international laws, that cultural, religious and political dogmas can be tested.

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260 Kant, 'Perpetual Peace: A Philosophical Sketch' at. p. 106
261 Hayden, 22
262 Ibid
264 Ibid, 269
265 Hayden, 22
266 Held, 43
267 Ibid.
Kant’s vision of a cosmopolitan peaceful world creates a sphere where “all people will regard themselves and others as free and equal ‘citizens of the world.’”[^268] Though Kantian cosmopolitanism is heavily criticised for contradicting his geography,[^269] his efforts to visualize a common humanity is something outstanding for subsequent cosmopolitan theorists. Therefore it can be said, that from mere Stoic ethical sensibilities Kant’s attempt was to lift the cosmopolitan vision into “a domain of actual political processes and juridical organization.”[^270] Though the world political order conceived by Kant is yet unrealized, one can say that it has inspired various cosmopolitan arguments that criss-cross one another in search of global justice or a unified international community.

### 3.1.1 The essence of cosmopolitanism in contemporary understanding

In the contemporary period, cosmopolitanism has been conceived and expounded in the work of many authors.[^271] Although their approaches can be quite different,[^272] in this period, the conception of cosmopolitanism can be said to have three key elements. The first element is that the ultimate unit of moral concern are individual persons; this can be called the principle of individualist moral egalitarianism. The second element is that of equal moral worth of every individual person which should be acknowledged by all, and the third element of

[^269]: It has been pointed out that Kant’s cosmopolitanism tend to be exposed as a sham when it is brought side by side with his geography, his division of the races and subsequent conception about the superiority of one race and the inferiority of the others lends credence to the accusation that he conceived humanity to be unequal. (See, Steven Vertovec and Robin Cohen eds., *Conceiving Cosmopolitanism: Theory, Context, and Practice*, New York: Oxford University Press, 2002), 144-145.
[^270]: Hayden, 22.
[^271]: Kor-Chor Tan points out “four overlapping cosmopolitan distinctions” that have been made among contemporary authors. The first is “offered by Charles Beitz between cosmopolitanism as a moral ideal and cosmopolitanism as an institutional claim” The second concerns “the distinction introduced by Samuel Scheffler between cosmopolitanism as a claim about justice and cosmopolitanism as a claim about culture and individual identity” The thirdly “weak” cosmopolitanism is distinguished from “strong” cosmopolitanism. The fourth distinguishes between “extreme” and “moderate” forms of cosmopolitanism. See (Kor-Chor Tan, *Justice without Borders*, Cambridge University Press, 2004), 10-11.
[^272]: Held, 44.
contemporary cosmopolitanism is that which emphasises that equality of status and reciprocal recognition should require that individuals enjoy impartial consideration of their claims.273

One can say that cosmopolitanism is always understood as the ascription of importance to every individual person.274 The point of departure of cosmopolitan arguments is on any of these basic premises which ascribe moral value to each human person. These elements provide the backgrounds for all other cosmopolitan arguments that are made from political, cultural or other dimensions.

As Alyssa Bernstein points out, Cosmopolitan theorists of the late 20th and 21st centuries commonly base their arguments on one or another form of moral cosmopolitanism or on some conception(s) of morality belonging to that.275 All cosmopolitan conceptions of morality hold that,

\[\text{[A]ll human beings are morally important and must be properly taken into account in practical deliberations about any actions (especially law making and policy making) that may significantly affect anyone's vital, fundamental or otherwise important interests.}\] 276

Essentially, cosmopolitanism ultimately connotes “the ethical and political space which sets out the terms of reference for the recognition of peoples’ equal moral worth, their active agency and what is required for their autonomy and development.”277 The idea of cosmopolitanism provides the framework through which laws and policies can be specified so as to be universally acceptable, any policy or principle that is not accepted by all is

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273 Ibid., 45-46
274 In another way, Patrick Hayden shows that cosmopolitanism is the “systematic articulation” of three basic premises. The first premise is that individual human beings are the ultimate units of moral and political concern, individual persons are subject of concern for everyone, and the human status is conceived as having global scope.(Patrick Hayden, 11)
276 Ibid.
277 Held, 49

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regarded as unjust. This implies that from a moral point of view there is duty of reasonable solidarity or responsibility among human persons since we have to include everyone’s interest in our moral reasoning.

Principles of justice ought to go beyond “nationality” and “citizenship”; cosmopolitan justice is understood to be “justice without borders.”\(^{278}\) Cosmopolitan justice considers every individual upon the earth, irrespective of their nationality, as having equal moral worth. Since all human beings have equal moral worth, all human beings are to be treated with respect and dignity and this means that we have obligations towards everyone including those who stand outside the borders. We have duties we owe to those who are near and dear to us, but at the same time we have obligations we owe to everyone on the virtue of their being moral persons.

3.2 Cosmopolitan arguments for open borders

From what has been shown in the previous sections, cosmopolitans see all human beings as having equal moral worth, its theory of justice is based on the fact that the scope of justice is taken to be universal, and discrimination against any human being is unjustified when their ultimate entitlement to control their destiny is being considered.\(^{279}\) Cosmopolitanism sees humanity as a single “ethical community” belonging to a “single polity.” This is contrary to communitarian or nationalist understandings that prioritize the interests of discrete communities.

For cosmopolitans “the proper account of moral personality cannot but be universalistic and all inclusive.”\(^{280}\) The borders that divide communities or nations become secondary when there are issues of common humanity and global justice. Based on this, there are disparate

\(^{278}\) Kor-Chor Tan, 1


\(^{280}\) Ibid.
cosmopolitan arguments for open borders. For example, a cosmopolitan argument has been developed based on the interpretation of Rawlsian Liberalism, and also there are cosmopolitan arguments based on the growing need for global distributive justice. For example, Joseph Carens has given an interpretation of Rawls’ theory so as to argue for a universal right to immigration on a liberal cosmopolitan platform. On the other hand, there are cosmopolitans who argue for open immigration on the ground that it is instrumental for global justice, but do not presume an ‘unqualified’ right to immigration.\(^{281}\) It is important to first examine the cosmopolitan argument that proposes an universal “unqualified” right to immigration that is based on the Rawlsian “original position.”

3.2.1 Rawlsian liberalism and the case for open borders

Joseph Carens has been a key cosmopolitan thinker in making the case for open borders. Carens sees John Rawls’ *Theory of Justice*\(^ {282}\) as providing the basis for arguments in favour of open borders as, in his view, it “leaves little room for (immigration) restrictions in principle.”\(^ {283}\) The issue of border restrictions did not arise in the original Rawlsian theory as he was much more concerned with a given state, or “closed system”. Equally it does not arise in his later work *The Law of Peoples*.\(^ {284}\) However, Carens sees Rawls’ central idea of ‘the original position’ as leading towards advocacy of open borders. In this ‘original position’, Rawls suggests that if people are to make moral choices, they ought to make them from


\(^{284}\) John Rawls himself did not acknowledge this in his later work, but he only mentions it in passing in *The Law of Peoples*. Seyla Benhabib has argued that there is the absence of ‘sustained focus’ on movement across borders in Rawls’ later work *The Law of the Peoples* though few remarks on that are scattered around the text. (Seyla Benhabib, “The Law of Peoples, Distributive Justice and Migration,” *Fordham Law Review* 72, (2004): 1761-1787).
behind a veil of ignorance," not knowing anything about their personal situations in society such as their 'place', 'class', or 'ability'.

For Rawls, this "original position is the appropriate initial status quo which insures that the fundamental agreements reached in it are fair." It is this fact that gives rise to the Rawlsian dictum of "justice as fairness." Because people will not be aware "how the various alternatives will affect their own particular case," this will oblige them "to evaluate principles solely on the basis of general considerations." From behind "the veil of ignorance", people are more likely to choose two principles; the first will give the assurance of "equal liberty to all." The second will allow social and economic inequalities only in so far as these inequalities are to "the advantage of the least well-off (the difference principle) and attached to positions open to all under fair conditions of equal opportunity".

Carens developed Rawls' argument to apply it globally and not just to a given society. For Carens, the reasons that make the "original position" important in our conception of justice in a given society, should also make it relevant "across different societies." In an "original position" such contingencies as birth, place or nationality will be "arbitrary from a moral point of view" and will not determine people's choices of principles of justice. Moreover, such a position will in no way allow restriction on immigration or emigration, because, they would be considered basic liberties.

286 Ibid.
288 Ibid.
289 Ibid.
290 Ibid.
292 Ibid.
294 Ibid., 335.
295 Ibid.
296 Ibid.,336.
Among other contemporary theories Carens ultimately finds the Rawlsian approach to be most “illuminating.”\textsuperscript{297} In various articles he has expounded and developed this position in search for a cosmopolitan theory of justice that allows for open borders.\textsuperscript{298} His arguments are cosmopolitan based on the liberal egalitarian emphasis on the rights of the individual and equality of all persons.

3.2.2 A liberal egalitarian argument for open borders

Though the concept of ‘liberalism’ can be seen from different perspectives, “the underlying philosophy begins with a statement of the autonomy of the individual.”\textsuperscript{299} It sees the rights of every individual as crucial in a free society and “is associated with freedom in all its dimensions”.\textsuperscript{300} Egalitarianism “stresses the value of making people more equal.”\textsuperscript{301} Such equality stretches beyond nations or states, “it can apply to wealth, status and power....”\textsuperscript{302}

Carens extends this concept of egalitarianism to the global community, each individual is a cosmopolitan citizens and is as important as the others, and no individual person should be valued more than others.

\textsuperscript{297} Carens, “Aliens and Citizens”, 332.


\textsuperscript{300} Ibid.

\textsuperscript{301} Ibid., 113.

\textsuperscript{302} Ibid.
His arguments favour the protection of the rights of every human being, because, it is a matter of chance whether they are born in affluent nation or in a poverty stricken one. There are obligations owed to human beings on the basis of their humanity irrespective of their background; this means that the rights of every individual must be respected and protected, and no individual's right should be denied. From this position, individuals can freely decide to exercise their rights in any way they want, insofar as it does not obstruct the liberty of others.

In international law, individuals can freely leave their native states but at the same time have the right to return. No one should be bereft of this right to return to one’s native state. Against communitarians who argue that “immigration and emigration are morally asymmetrical,” Carens argues that since there is a right to leave, there should logically also be a “universal right of immigration”, that emigration and immigration should be balanced. If individuals have basic rights, which must be respected, it means that for the society to be what it ought to be, the exercise of such basic rights must not be obstructed in any way. Rather care must be taken to protect such rights for the common good of society.

As all cosmopolitans argue, each individual is as important as the other, no one person has more value than the other. Based on this, Carens argues that each individual’s right must be protected and all should have equal opportunities irrespective of what one is ascribed by birth. In this understanding, the open border argument is considered a rights based argument, free movement is seen as a basic human right.

303 Weiner, The Global Migration Crisis, 176.
304 UDHR, article 13 (2).
305 ICCPR, article 12.
306 Waltzer, Spheres of Justice, 40.
307 This means that there ought to be some sort of equilibrium between emigration and immigration. It is quite unbalanced for people to have the right to emigrate from a country while it is not a right for anyone to be accepted in a country. In this understanding one may want to migrate but in the end will not be accepted by any country.
3.2.3 Free movement as a ‘right’ in a cosmopolitan world order

Free movement is conceived to be a basic human right because of its intrinsic importance as a human liberty. Though liberal societies recognise the freedom of movement within the state as a right,\(^{308}\) international law does not guarantee the right of people to cross borders. The contention is whether the moral justification for freedom of movement within countries can and should be extended to freedom of movement among countries.

The liberal tradition emphasizes the basic liberties that are so fundamental to life.\(^{309}\) However, John Rawls mentions that the “liberty and integrity of the person” can be violated by “slavery and serfdom, and by the denial of free movement and occupation.”\(^{310}\) In this perspective, freedom of movement is presented as a basic moral right which every individual within a given state should have because it is so essential for a normal life. Carens argues that this idea of free movement applies globally; no one or state should lawfully put any restriction on such freedom except when it is done to protect freedom itself.

In a cosmopolitan understanding freedom of movement is taken as a basic liberty like “freedom of religion,”\(^{311}\) because, in the original position, people would want it to be a basic liberty for the same reason as they would want freedom of religion.\(^{312}\) Freedom of movement is seen to be one of these basic liberties as it ensures the exercise of other basic rights, without such freedom people will be incapable of exercising other freedoms. For example, *The Universal Declaration on Human Rights* provides that people have the right to free

\(^{308}\) *UDHR* article 13.1; *ICCPR* article 12.1

\(^{309}\) These basic equal liberties includes “freedom of thought and liberty of conscience; political liberties and freedom of association, as well as the freedoms specified by the liberty and integrity of the person; and finally, the rights and liberties covered by the rule of law.” John Rawls, *Political Liberalism* (Cambridge, MA: Harvard University Press, 1996), 291.

\(^{310}\) Ibid., 335.

\(^{311}\) *UDHR*, article 18.

choice of employment.\textsuperscript{313} Bearing in mind the present socio-economic inequalities in our world today, people often need to move to other destinations to find work. If people have the free choice of employment it has to go hand in hand with the right to freedom of movement, since people have to move in order to reach where the opportunities of employment are. Such a right is unrealistic in the absence of freedom of movement.

When state borders remain closed, people’s freedom to move is limited coercively. This is tantamount to a failure on the part of any liberal state that should be committed to liberal principles. Since freedom of movement is for the common good, it does not make sense when we treat “freedom of movement within states as a moral imperative”\textsuperscript{314} but at the same time treating “freedom of movement across states borders as a matter of political discretion.”\textsuperscript{315} This is so, because, it is still the same individual whose needs would warrant his movement within states who is in question; his needs would on some occasions warrant his crossing of borders as he exercises his liberty. Therefore, it is seen as a duty for nations to let their borders be open to anyone who wishes to come in and the only way a state could be justified to close its borders would be if it was done for the sake of protecting other basic freedoms.\textsuperscript{316} Joseph Carens has been used here as exemplifying the cosmopolitan argument that immigrants have an ‘unqualified’ right to immigration since freedom of movement is conceived as a basic right. Another cosmopolitan argument for open borders is made on the basis of global distributive justice which, to some authors, is seen as a necessity to rectify present global inequalities.

\textsuperscript{313} UDHR article 23.
\textsuperscript{314} Ibid.
\textsuperscript{315} Ibid.
\textsuperscript{316} Carens, “Immigration and the Welfare State,” 215
3.2.4 Open borders as a means of facilitating global distributive justice in a cosmopolitan world order.

Unlike the previous argument that presents free migration as a *right*, some other cosmopolitans argue for open borders as a means of facilitating distributive justice in the world.\(^{317}\) Cosmopolitans ethically see each human being as having equal moral worth no matter how privileged or less privileged they may be. The international arrangements of borders should not therefore be so arranged that there is a discriminatory clampdown on some people, while border crossing is made easy for the others who enjoy “feudal”\(^{318}\) privilege. It is therefore taken as a demand of justice that all people be treated the same way at the borders so as to give everyone equal opportunities.

When states make their borders relatively impenetrable for people from less developed states, they use coercion to protect the prosperity of their own citizens and in so doing they are depriving other people of opportunities to prosper. They deprive them of the “opportunities to improve their income and general wellbeing.”\(^{319}\) Not just that, they deprive them of the opportunity “to increase their freedom and safety.”\(^{320}\) Such exclusionary measures which protect the interest of native citizens alone, only entrench global inequalities designating some people as more valuable than others. It means that;


\(^{318}\) The term ‘feudal’ has “borne many shades of meaning and has been used in many ways by different writers.” (See David Herlihy, ed., *The History of Feudalism*, London & Basingstoke: Macmillan, 1971, xiii). Feudalism is a term used to describe forms of political, economic, and social relationships found during the Middle Ages, especially in Medieval Europe but also in Japan and sometimes in China. A narrow definition of feudalism as a legal relationship refers to “a set of reciprocal legal and military obligations within the nobility between a lord and a vassal.” The lord granted protection, lands or a fief to vassal who in return provide military service and to give “counsel” or aid to the overlord. (See Bryan S. Turner, ed., *The Cambridge Dictionary of Sociology*, Cambridge: Cambridge University Press, 2006, 203); Joseph Carens uses this term ‘feudalism’ to express the current immigration restrictions in Western democracies. He sees current immigration restrictions in the developed states as “feudal barriers to mobility” barriers that are meant to “protect unjust privilege” of those who are citizens of developed states. (See Joseph H. Carens, “Aliens and Citizens,” 346).

\(^{319}\) Weiner, *Global Migration Crisis*, 177.

\(^{320}\) Ibid., 177.
The exclusion of so many poor and desperate people seems hard to justify from a perspective that takes seriously the claims of all individuals as free and equal moral persons.\textsuperscript{321}

On the basis of equality of opportunity, freedom of movement across state borders becomes essential as it is a prerequisite for the ability to pursue the given opportunities in life; you have to be able to move to where the opportunities are in order to take advantage of them.\textsuperscript{322}

Since liberal principles emphasize the equal moral worth of each person, it becomes important that people's wellbeing must be considered no matter where they happen to be in the world. Insofar as states' established borders are meant to protect citizens of prosperous nations, they are leaving the global poor out in the lurch and so entrenching global poverty and inequality. Justice would also demand that rich nations render humanitarian assistance to the poor as they are in dire need of survival. On this basis, cosmopolitans see the opening of developed states' borders as a way to address such inequalities. Their contention is that openness at the borders will give everyone an equal opportunity and will lead to the reduction of socio-economic inequalities that abound in the Third World.\textsuperscript{323}

When barriers are removed at the borders, people would probably take opportunities that come by to improve their lives. In a world that is ridden with poverty, it is the realities of economic inequalities among states that nurtures and give more credence to the moral argument for free migration.\textsuperscript{324} Although there are various reasons why people feel the need

\textsuperscript{321} Carens, "Migration and Morality," 26.
\textsuperscript{322} Ibid., 26.
\textsuperscript{323} Robert Goodin, "Free Movement: If People were Money....," pp.563-567;
\textsuperscript{324} Weiner, Global Migration Crisis, 177.
to migrate, economic reasons seem to dominate, though in most cases these reasons are tied up with others.  

Since all human beings interests are deemed important in a cosmopolitan world view, in the midst of rising global inequalities, all human beings should be given equal opportunities, including movement, whether they are citizens or aliens, as this could be a means of tackling global poverty. Moreover, due to the high level of poverty and inequality in the world, and the failure or inability of many states to provide viable options for their citizens, rich nations are expected to do more for the global poor.

Robert Goodin has argued that if rich nations are unable to provide adequately for the poor outside their borders, “they are morally obliged to pay instead in a currency that they hold even dearer.” Such a payment would mean admitting “substantial numbers of immigrants from the poorest countries;” thereby providing them with the opportunity to make a meaningful living. The reality is that rich nations have not been able to fulfil their moral obligations of providing adequate aid to the poor and they are therefore left with the option of opening their borders. As Veit Bader writes:

[S]tates should have the moral and legal obligation to let people in as long as and to the degree that they do not live up to their minimal moral obligations to guarantee basic human rights to safety and subsistence for all human beings irrespective of nationality.

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325 Though economic gains are more associated with the issue of migration, people migrate for so many reasons. People suffer from violence and abuse and so their safety and freedom are always at stake and these could be reasons to emigrate and to look for better environments that can enhance one's freedom and safety. The varied reasons behind people's migration will come through in the following field work chapters.


327 Robert Goodin, “If people were Money...” in Free Movement: Ethical Issues in the Transnational Migration of People and Money, 8.

328 Ibid, 9.

Arguing for open borders places a responsibility on developed nations, to do more in reducing the sufferings of people in the Third World and part of what they can do is to revise their immigration policies so that on the basis of equality, everyone can have equal chance in pursuing life options.

Even when it is argued that we should concentrate on improving the lives of the poor where they are, it is important to note that in the end, the developed nations may not be in a position to adequately take care of the poor elsewhere. This inability brings back the question, are developed nations morally right to refuse people entry if they have not done enough to improve the lives of the poor? Or put in another way, if developed nations have not provided enough foreign aid (as has always been the case) shouldn’t they be morally bound to let people in? The answers to these questions suggest strongly that there is need for openness at the borders on the cosmopolitan ethical grounds of the equal value of all human persons.

These cosmopolitan arguments for global distributive justice do not necessarily presume a prima facie right to cross borders, rather these authors see the opening of borders as providing more life options for the poor in the world, who in the midst of socioeconomic inequalities are not given opportunities to improve their lives. In this understanding, opening the borders is instrumentally necessary for global justice as it becomes a means towards achieving this goal. However, it is notable that in the formulation of cosmopolitan arguments, the claims for freedom and justice are regularly tempered by the recognition that the realization of some freedoms or rights can come at the cost of the curtailment of others.

Carens, for example, was quoted earlier as recognising that ‘no one or state should lawfully put any restriction on such freedom except when it is done to protect freedom itself’. This

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330 Ibid, 18.
recognition of exceptions suggests that there may be reasons to restrict movement and maintain borders. As noted earlier, the exercise of freedom is important both for migrants and citizens. Inasmuch as migrants deserve the right to cross borders in a cosmopolitan world order, those who are citizens need their freedoms not to be compromised. Here the existence of borders can rightly be seen as legitimate if imposed to protect freedom itself and the rights of those who are citizens.

As Carens concedes, borders can exist for the sake of protecting other basic freedoms. As will be elaborated now, communitarian arguments in defence of borders do have their merits and cannot be completely overridden; they do have their moral legitimacy and must be seriously considered before advocating a cosmopolitan theory of justice.

3.3 Moral legitimacy of border control arguments: The merits of communitarian arguments

A cosmopolitan world order where free movement is guaranteed in an unqualified manner would have to come at a price. Fully implementing such an idea would entail a completely borderless world where free movement would be guaranteed as a basic right but at the same time this would undoubtedly have implications for members of bounded communities who want to protect their interests, freedoms and values. Contemplating the idea of complete openness makes one realize the relevance of communitarian arguments for the existence of international borders.

As discussed back in chapter two some of the arguments put forward in favour of border restrictions, like welfare/special responsibility and security while not incontrovertible are nevertheless, quite defensible. They are credible despite any objection that can be raised. On the other hand, some are problematic on ethical and empirical grounds, and this refers

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331 Carens, "Immigration and the Welfare State", 215
specifically to the economic and cultural protection arguments. For example, despite the popularity of the economic arguments for border closure, such arguments are based on contestable assumptions because increased immigration has been shown to be vital to national economies in very many ways.\(^{332}\) Since economic arguments for closed borders are not based on any moral principle, but rather based on contestable variables, one cannot out rightly argue that borders should be closed for economic reasons.

The argument for border protection to prevent people's culture from being submerged\(^{333}\) is equally problematic. Here, it is believed that culture provides people with their only context of choice.\(^ {334}\) Yet in the world the cultural context in which people live their lives is constantly evolving and changing. Cultural contexts are continually transformed by economic and social realities over time. This leaves us with the basic question as to whether there is a static culture which would give grounds to exclude immigrants from different cultures. The obvious answer is no.

Human culture is not "static", it is dynamic.\(^ {335}\) Any argument fashioned to restrict immigration on the basis of culture would be inherently contradictory, considering the fact that migration of people and intermingling of human cultures is part and parcel of human evolution and has made the world what it is today. Having said that, there are some arguments that, drawing on particularist thinking, do show why borders retain some moral importance and desirability.

\(^{332}\) See Chapter 2, 67 ff., especially Chang, "The Disadvantages of Immigration Restriction as a Policy to improve Income Distribution," 23-45; Chang, "Liberalized Immigration as Free trade: Economic Welfare and the Optimal Immigration policy," 1147-1244; Again, neoclassical economic theory suggests that unrestricted migration is a positive thing to the global economy because immigration controls are barriers to free markets. Immigration barriers prevent labour from moving into where there is more demand and productivity, (see Straubhaar, "Why do we Need a General Agreement on Movements of People (GAMP)?" 134)

\(^{333}\) Chapter 2, 62 ff.

\(^{334}\) Kymlicka, Multicultural Citizenship, 95-6.

\(^{335}\) There are possibilities that e.g. grandparents of those who see themselves as citizens in the developed states may have emigrated from other countries.
3.3.1 Crucial arguments for the existence of borders

It has to be said that arguments for special responsibility, welfare and security provide quite plausible reasons to make the case of closed borders morally acceptable. Although chapter two noted that these arguments were not incontrovertible, they do stand out and cannot be brushed away easily. Arguments for special responsibility to fellow citizens are tied up with the issue of welfare as liberal developed states are welfare states.

No matter how strong the cosmopolitan claim concerning duties toward all moral persons, there is something equally strong concerning those who stand in special relation to us, such as our compatriots. As Stephen Macedo has pointed out, there can be a moral obligation to the poor abroad, but there is a different obligation owed to those who are fellow citizens.\(^{336}\)

Whichever way the poor who are outside the state may be in need, there has to be a special responsibility to those who are compatriots.\(^{337}\) One reason for this is that whatever claim foreigners who are in need may have, natives rightly can hold claim to the goods and institutions they have built over time with their collective efforts. Such institutions could not have stood if not for peoples’ efforts over time.

It is only through a collective effort that the welfare institutions have become valuable today. Benefits from labour, welfare, pensions, and other group contributions of members must be protected. Those who in their lifetime have been part of pension schemes deserve the right to benefit from what they have toiled to save. Likewise, the fact that law and order are established in the developed states should be seen as a hard won accomplishment which depended on the effort of the state and its citizens.

In making ethical considerations concerning the acceptance of immigrants, it has to be accepted that ‘members’ of liberal nations on the basis of “associative ownership” have a


\(^{337}\) Ibid.
moral claim to the goods they collectively own, therefore, the interests of ‘members’ who associatively own the ‘good’ unarguably have to be important.

Ryan Pevnick shows that there has to be an understanding that the members of a political community have a ‘special connection’ to the good and the institution they have developed; it is a good they associatively own. However, this does not suggest that the community should restrict access to the institution whichever way it likes.\(^{338}\) Members need not treat ‘non-members’ or those who wish to become members in a way that violates human equality.\(^{339}\)

Inasmuch as members claim ownership of what they have built over the years and inasmuch as the state has to show more solidarity to compatriots whose needs are of primary importance, this has to be done in a justifiable manner. While it would be ethically questionable to claim that what members have collectively built up can be claimed by anyone who does not belong as a member, it would be equally ethically unjustified if they selectively limit the entry of any group of people who desire to be members, like many TCNs, while relaxing the rules of entry and membership for others.

Another strand of the welfare argument against openness, suggests that migrants who have not contributed will be a drain on the resources the members have created. Welfare is an important institution as it is the backbone of liberal developed states like the EU so care must be taken to make the welfare system functional so that it does not collapse. However, it has to be said that the ability of migrants to pay taxes and contribute to welfare depends on their immigration status which is “determined by morally arbitrary factors.”\(^{340}\) If TCNs are given

\(^{339}\) Ibid., 185.
immigration status that affords them the right to work and contribute, it is likely that they will contribute their own quotas to the welfare system and would not be "suckers".  

The communitarian argument for security is equally important for the survival of individuals and the liberal institutions. The fundamentalists’ ideology that has heightened terrorist activities in present world is something that cannot be overlooked either from the communitarian or cosmopolitan viewpoint. Advocates of closed border regimes argue for border restriction on the ground that borders are necessary for security and the protection of democratic values like the civil rights of residents.  

It is quite true that it is this assured security that protects all the values of liberal democracy, and without security, both natives and would-be immigrants will all be at risk. The state should be entitled in any circumstance to restrict the movement of those whose activities potentially can be destructive to the liberal institutions, but it has to be clearly defined when an immigrant becomes a threat.

An immigrant cannot be presumed as a threat simply because of her nationality. It is ethically suspect when a group of people are ‘stereotyped’ as security threats when, in fact, anybody including citizens can be security threats. However, security is something which everybody needs and any argument based on security cannot be brushed away bearing in mind its social importance.

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342 Chapter 2, 59 ff.
3.4 Balancing the conflicting goals of liberal cosmopolitan arguments with communitarian concerns: A consequentialist cosmopolitan argument.

The seriousness of the communitarian arguments concerning special responsibility, welfare and security are suggestive of why a middle position between the poles of complete border openness and closure is important to find. Moreover, as has been suggested in relation to both welfare and security, the existence of obligations to existing citizens do matter but do not preclude obligations to others and considering the realities of poverty and inequalities in the present world, it is pressing that from a liberal perspective that we search for ways to reconcile particularist commitments with cosmopolitan concerns.

It has to be said that the extreme versions of communitarianism and cosmopolitanism wrongly elevate one consideration at the expense of the complexity of the moral dilemmas involved. We are faced then with the task of finding a way to strike a balance between openness and closure at the EU borders.\textsuperscript{343} Perhaps, by considering these conflicting interests and guided by an ideal moral theory, one can develop a middle position that takes into consideration these various claims.

In a world of growing inequalities, a more liberal immigration regime should be seen as a ‘requirement of justice’\textsuperscript{344} rather than the ‘selective procedures’ that are ostensibly associated with the present EU border regime. However, a more liberal immigration regime may be difficult to justify on a cosmopolitan platform that purely advocates for an ‘unqualified’ right to immigration, but it can be justified still on a platform that recognises the moral importance


\textsuperscript{344} Carens, “Migration and Morality,”26; On the contrary, Ryan Pevnick argues that equality of opportunity is not a necessary condition of respecting equal moral worth of individuals. At the same time he shows that opening up immigration is not a requirement of justice as some people like Carens claim, but that it might be benevolent to adopt open immigration policies (See Pevnick, *Immigration and the Constraints of Justice*, 108 ff.).
of the claims of migrants as well as the claims of residents. Arguably such a platform could be provided by ‘consequentialist cosmopolitanism’ which sees present immigration restrictions as something that should be reformed while still not relegating communitarian commitments entirely.

3.4.1 Consequentialism as an ethical theory

As a class of normative ethical theory, consequentialism holds that human actions or omissions are right when they produce good consequences. The consequences of human actions are the sole basis of judging whether they are right or wrong. It maintains that “our actions are right or wrong because, and only because of their consequences.” This goes to show that ‘right’ and ‘wrong’ are the function of the consequences of our actions. What distinguishes consequentialist from non-consequentialist ethical theories is the insistence that when it comes to rightness or wrongness, nothing matters but the result of our actions.\(^5\)

Consequentialism is traditionally opposed to other theories where precedence is given to motives or apriori laws as seen in classic deontological ethical theories. Deontological theories evaluate human actions from the standpoint of what we ought to do. This means that some choices that we make cannot be justified by their effects or consequences no matter how good their consequences may be. Furthermore, a deontological theory determines the rightness or wrongness of human actions from the character of the behaviour itself, but not from the outcome of the human action. Again, consequentialism is distinguished from virtue ethics, because virtue ethics judges the rightness or wrongness of human conduct based on

\(^{346}\) Ibid.
the character of the agent rather than on the consequences of the act or on the nature of the act.

In the midst of alternatives, a standard consequentialist theory would require an agent to perform the action "that has the best consequences or results in the most good." There is the assumption that we can make agent-neutral judgements concerning different states of affairs so as to compare their goodness with their badness in order to know which outcome will be better than the others. In other words, without making reference to the normative principles of right or wrong, consequentialism warrants us to compare and differentiate states of affairs so as to know which one is good or bad, better or worse.

Consequentialism can be seen as a maximizing doctrine which takes into account the values actions have and not just the values of their subsequent effects. Consequentialists are equally interested not just in the consequences of one acting in various positive ways, but also in what happens when an agent refrains from acting. The consequence of one failing to act in a particular way is important in making moral evaluations. A standard consequentialist position will be that an agent should choose the action that will result in a valuable outcome which is at least as great as any other action open to the agent.

Consequentialism requires people to bring as much expected good as they can but it does not always tell agents what the good is, hence, it is not a complete ethical theory. Utilitarianism represents a way of making consequentialism be a complete ethical theory.
Though there are other consequentialist ethical theories like ethical altruism, ethical egoism, and other teleological ethics, utilitarianism is more prominent among consequentialist ethics. In itself, utilitarianism is a consequentialist doctrine, but it is not the same as consequentialism. There is always a distinction between act and rule utilitarianism. Act utilitarianism holds that human actions are judged directly according to their consequences for happiness. For an agent who has to make a choice, “the right act is that which will produce the most happiness, not just for the agent himself but for all who are in any way affected.”

Rule utilitarianism holds that human actions are judged according to rules which, if followed, will produce consequences that lead to the greatest happiness. One differs from the other in that rule utilitarianism makes the general happiness not directly but indirectly the criterion of right action. Both of them possess two distinct aspects, the hedonic which is concerned with pleasure and happiness, and the consequentialist which focuses on consequences of human action. The two versions are distinct and separate as neither implies the other.

Generally speaking, utilitarianism takes ‘well-being’ as the good in itself; wellbeing is valuable for its own sake. Put in another way, utilitarianism is a “welfarist value theory”, it holds that human happiness or human wellbeing “is the only thing that is valuable for its own sake.” Also, when we consider each person’s wellbeing, “the wellbeing of any person is neither more nor less valuable than the wellbeing of any other.”

Utilitarianism sees the ‘good’ as additive; we can always comparatively look at the relative gains and losses in people’s wellbeing. Summarily,

354 Gordon Graham, 139
355 J.L. Mackie, 136.
356 Ibid 137-138
357 James Dreier ed., 10
358 James Dreier ed., 10
As a consequentialist theory, utilitarianism thus asserts that the standard of moral assessment is well-being and that the right course of action is the one that bring about the greatest expected net well-being.  

Consequentialist cosmopolitanism, which I will argue provides the metric for evaluating the EU border regime, is also developed from consequentialist ethics which considers the right action as the one that promotes human wellbeing. Like utilitarianism it bases its standard of moral evaluation on human wellbeing, but among other differences, it differs in its calculation of what is considered as wellbeing.

### 3.4.2 Consequentialist cosmopolitanism

Consequentialist cosmopolitanism is an approach developed by Raffaele Marchetti from consequentialist ethics and can be distinguished from other theories of justice by its fundamental epistemological consideration concerning the limitation on *interpersonal comparisons of utility*. It perceives a constraint in the idea of making comparison between the utility of different individuals. Other ethical theories like Utilitarianism and contractarianism would generally accept the possibility of making comparisons and aggregating the utility of different persons for the sake of redistribution in society.

Consequentialist cosmopolitanism is derived from "an ethical theory of choice based consequentialism and a political theory of cosmopolitanism." According to Raffaele Marchetti there is a certain commonality between choice based consequentialism and

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359 Ibid., 10
361 Marchetti, *Global Democracy: For and against*, 37
362 Ibid., 36
cosmopolitanism as both theories consists in three key principles of individualism, egalitarianism and universalism that are also shared by other normative theories.\textsuperscript{363} Individualism would mean that the most relevant agents to be taken into account in the normative exercise are individuals. It embraces individualism because consequentialist cosmopolitanism considers the single human agent as the principal recipient of the good.

On the other hand, egalitarianism maintains that fundamentally human beings are considered as equals. It embraces egalitarianism, since the epistemological constraints impose respect for each individual sphere of action, any action of the individual can be a potential generator of well-being and therefore these actions of the individuals ought to be respected. Also, consequentialist cosmopolitanism embraces universalism; the scope of moral consideration includes every human being wherever they are situated.\textsuperscript{364}

However, consequentialist cosmopolitanism is still teleological and goal based like utilitarian ethics. As goal based ethical theory, it aims to promote the good, "which is assumed to reside in a comprehensive conception of individual well-being."\textsuperscript{365} Succinctly, "an action-guiding principle is warranted only insofar as it complies with the test of universalizability, i.e. can be expected to produce the best outcome of the good i.e. the maximum general well-being."\textsuperscript{366}

Differing from deontological theories, which promote values, the objective of consequentialism is to promote only the values that foster well-being.\textsuperscript{367} In doing this, consequentialist cosmopolitanism relies on the normative assumptions of 'individualism', 'egalitarianism' and 'universalism'. The interest and actions of every individual person become important, because, there are the epistemological constraints which impose respect for individuals' actions which on the other hand are potential generators of well-being.

\textsuperscript{363} Ibid.
\textsuperscript{364} Ibid
\textsuperscript{365} Ibid., 39
\textsuperscript{366} Ibid.
\textsuperscript{367} Ibid., 39
Raffaele Marchetti identifies the core factor that distinguishes consequentialist cosmopolitanism from any other theories, namely; “freedom of choice as a metric of well-being.”\(^{368}\) The ability of each individual to choose by themselves guides us in identifying what well-being is for them. Accordingly, due to the fact that reliable interpersonal comparisons are out of question, the “indicator of well-being can only be indirectly and causally identified in the individual capacity for choice between different life options.”\(^{369}\) Due to this “epistemological constraint” concerning the unavailability of reliable interpersonal comparisons of utility, consequentialist cosmopolitanism adopts an agency-based notion of well-being.\(^{370}\) This means that the idea of well-being is not evaluated from a neutral position rather from the point of view of the agent who is making the choice.

It would mean that human well-being is not identified in human experiences of pleasure or happiness; rather human well-being will be indirectly identified in the individual person’s capacity to make a choice. Therefore consequentialist cosmopolitan theory maintains that:

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\text{[O]nly when agents are in a position to freely choose their preferred course of action through a process of informed and effective personal deliberation can genuine well-being be attained. Following from this, consequentialist cosmopolitanism prescribes the promotion of the individual capacity for choice as the ultimate ethical goal.}^{371}
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This ultimate ethical goal would seriously imply that a person is the best judge of what is good for her, she primarily decides on matters that affect her and her freedom or ability to make a choice explains her ‘well-being’. Her well-being cannot be judged by other external or interpersonal comparison with other people as other ethical theories would normally do. Hence,

\(^{368}\) Ibid. 40
\(^{369}\) Ibid.
\(^{370}\) Raffaele Marchetti, “Consequentialist Cosmopolitanism and Global Political Agency”, in Global Ethics and Civil Society, eds. J. Eade and D. O’Byrne, Aldershot: Ashgate, 2004, 57-73, at. 58
\(^{371}\) Ibid., 58-59
[T]he goodness of action is its choice worthiness. Personal choices rather than some specific theory-laden conception of the good are thus taken to be the best (albeit indirect) expression of individuals' interest, i.e. what will make the individual generally better off. 372

Consequentialist cosmopolitanism maintains an agent-relative theory of the good, in that only when agents are in a position freely to choose their preferred course of action through a process of informed and effective personal deliberation, can they attain genuine well-being.

In other contemporary theories of justice like utilitarianism, 'well-being' will be measured in terms of pleasure, happiness and other specific elements like income, wealth, preference satisfaction. Consequentialist cosmopolitanism conceives 'wellbeing' as not directly individuated in these "specific elements" as they are not "measurable in a trustworthy way and thus not viable social tools for political public policies." 373 Since there is no guaranteed objective way of measurement of what well-being is for the individuals,

[C]onsequentialist cosmopolitanism identifies wellbeing indirectly in the presumed outcome, the unspecified by-product of the agent's freedom of choice, where, more analytically, choice is identified as the opportunity to choose among each subset of the set of alternative options. 374

Therefore, the core element of consequentialist cosmopolitan ethics is the idea of individual freedom of choice. A proposal for global justice would rest on the assumption that individuals have the freedom to choose what is good for them and should not be coerced in any way when they are faced with making choices. Hence, individual capability to freely choose is fundamentally valued because capability leads to individual well-being and equally to the

372 Marchetti, Global Democracy: For and Against, 40
373 Ibid., 41
374 Ibid.
"maximization of world welfare." This establishes the background for all consequentialist positions as it offers a *prima facie*, agent-relative theory of the good which is dependent on the "unique capability" of agents to choose their preferred life options. The world at large has the duty to maximize these individual capacities of choice making. Marchetti points out that,

[T]his use of an extended and indirect version of consequentialism is what most characterizes the ethical proposal of consequentialist cosmopolitanism against competing cosmopolitan theories.

Consequentialist cosmopolitanism maintains an "impartial conception of moral relevance," morally significant consequences which affect all morally significant human persons are always taken into account. It is 'universalistic' in that its scope is extended internationally to the whole world. Therefore, the "morally ideal world" is one that maximises the individuals' capacity to choose from various life options. It identifies two relevant rules in consequentialist terms, first the 'ultimate consequentialist rule' which is the maximization of the world welfare conditions. Secondly, the "intermediate rules," which refer to specific levels, "which contribute to the design of the political structure of a consequentialist global political system." These levels can be understood to be "the human rights regime and the principle of state self-determination."

From a consequentialist cosmopolitan perspective, because the individual's capability to choose her life options is crucial, this individual's rights must be recognised and protected. Therefore the human rights regime is crucial in creating the pathways for the individual to keep following her choices. However, consequentialist cosmopolitanism also recognises the

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375 Ibid., 44.
376 Ibid.
377 Ibid.
378 Marchetti, "Consequentialist Cosmopolitanism and Global political Agency," 60
379 Ibid.
importance of the state as sovereign because the state is important in enabling individuals choose their life options while at the same time maintaining its autonomy and protecting the associative projects of its members. In effect, states are "political devices for the promotion of social welfare."\(^{380}\)

This implies that consequentialist cosmopolitanism treats the individual, state and the world as an interconnected whole; they are not isolated because it is only by their being together that "a comprehensive normative treatment of the world social system be provided."\(^{381}\)

At the individual level, the universal interests of individuals to choose their preferred personal life options should be protected. At the state level, the collective interests of the state should also be protected as this grounds their self-determination. Finally at the world level, a set of international means are needed to govern "global phenomena".\(^{382}\) This implies a proposal that cosmopolitan democracies should be complemented by various universal humanitarian rules that have to be applied in cases of emergency, like human migration.\(^{383}\)

These levels are important because through their interaction a system that offers suitable responses to the complex social realities of our time can be realized.

Presently, the international arrangement of states "does not maximise the world's welfare condition,"\(^{384}\) as there are notable deficits concerning the failure to treat the individual, state and the world as a whole. Based on this, the individual’s capacity to choose her life options is not fostered, hence the world welfare is not maximised. Consequentialist cosmopolitanism

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\(^{380}\) Ibid.

\(^{381}\) Ibid., 60

\(^{382}\) Ibid.

\(^{383}\) Ibid. 66

\(^{384}\) Ibid., 61
offers a response to this “immoral state”\textsuperscript{385} of the world, as it aims to improve world welfare conditions overall.

3.4.3 Consequentialist cosmopolitan arguments regarding border arrangements

Considering the divergent arguments that have been advanced from communitarian and cosmopolitan standpoints, it has to be recognised that liberal theory already sets down the rights of individuals including the right to mobility. However, this right to mobility across national borders is very much constrained by the equally important right to autonomy and self-determination of sovereign states. Free movement is considered as a right which is important for individuals, but at the same time, states deserve the right of autonomy to regulate who can cross their borders, thereby placing unlimited restrictions on the right to free movement of people. Judging from this, from a consequentialist cosmopolitan perspective;

\begin{quote}
[M]igrants’ rights to freedom of movement have to be considered as a prima facie cosmopolitan right, a right that ought to be politically recognised and that contributes to individual well-being and subsequently to world welfare.\textsuperscript{386}
\end{quote}

Though this is the case, those who are already citizens have a claim to what they collectively own; therefore the right of entry for migrants “has to be balanced against a prima facie equally valid right of original residents to preserve their societal political project.”\textsuperscript{387} Just as it is for migrants, the right of original residents to preserve their project which contributes to their well-being and to world welfare is recognised in a consequentialist cosmopolitan framework. This means that the claims of residents and migrants are all significant as they “derive their legitimacy from a single principle of global justice, that of maximising social

\textsuperscript{385} Ibid.
\textsuperscript{386} Marchetti “Right to Universal Mobility: A Consequentialist Cosmopolitan Reading”, \textit{Ethics and Economics}, 4 (1), 2006
\textsuperscript{387} Ibid.
welfare by guaranteeing freedom of choice on different political levels.” Hence, a fair border regime has to consider their claims on equal footing.

Consequentialist cosmopolitanism treats the individual, state and the world together as a whole; from this perspective a consequentialist cosmopolitan reading of the current border regime would consider it problematic because the present closed border arrangement privileges states’ autonomy while neglecting the claims of individual immigrants and world welfare at large. From a consequentialist cosmopolitan reading, migrants are cosmopolitan citizens who are entitled to make a choice regarding how they want to enhance their life options.

In this understanding, migrants seeking admission are to be admitted if their admission will not threaten the well-being of existing citizens and do not pose an imminent danger to anyone. If they wish to become members by opting to acquire ‘citizenship,’ this has to be made possible if they do not constitute a nuisance to those who already are members. In this context, “citizenship is understood as a set of legal entitlements allowing for freedom of choice and full membership of the political community.” Since bundles of rights are always attached to citizenship, immigrants who are deprived of citizenship are de jure excluded from fully participating in the political community thereby being placed in a “subaltern status.”

From a communitarian perspective those who are “members” in Walzerian terms are entitled to control their destiny, including the right to restrict membership. For

388 Ibid.
389 Ibid
390 Ibid.
391 Walzer, Spheres of Justice, Chapter 2 “Membership”
consequentialist cosmopolitans, while it is true that members should control their destiny, it is problematic when communitarianism concedes an absolute privilege to those who are members thereby not recognising "the supervenience of the principle of impartial consideration of each individual right on equal opportunity of choice."\(^{392}\)

It is equally problematic when members wilfully discriminate by cherry-picking immigrants, admitting only those who are deemed to have satisfied what they consider as "entry requirements" that are always shaped to the needs and interests of receiving nations.\(^{393}\) Rather, since a consequentialist cosmopolitan justice should be universal, discriminations or cherry-picking would in no way be justified if we consider the ultimate right of individuals to be in control of their own destiny.

In order to strike a balance between migrants' claims and resident's claims, the consequentialist cosmopolitan position, as a viable ethical alternative, would require "an equal status of cosmopolitan citizenship for migrants and residents."\(^{394}\) This would mean that:

A cosmopolitan citizenship characterized by these rights becomes de facto a crucial institutional factor for individuals to increase (but sometimes even simply to exercise) their autonomy to choose differing options, and their capability to govern socio-political domain by changing their place of residence.\(^{395}\)

While this right should be extended beyond national boundaries, it should only be done insofar as such extension does not diminish the rights of original residents. Therefore, an

\(^{392}\) Marchetti "Right to Universal Mobility: A Consequentialist Cosmopolitan Reading", *Ethics and Economics*, 4 (1), 2006

\(^{393}\) Ibid.

\(^{394}\) Ibid.

\(^{395}\) Ibid.
equivalent ‘qualified’ right to cross international borders would equally optimize individual well-being in terms of “choice opportunities” and “political control” of people’s lives.\textsuperscript{396}

As has been shown previously, liberal developed states like the EU have a rightful claim to their goods based on ‘associative ownership’, but this, in no way, should deflate the fact that they have a \textit{moral duty} to consider the choices of those at their doorsteps. In a consequentialist cosmopolitan platform, they are bound to allow for \textit{moderately open borders} on the basis of impartial consideration of each individual’s right to freely make a choice concerning life options.\textsuperscript{397}

Citizens have a right to collectively decide over their destiny including the standard for accepting membership. However, such a claim does not entitle them to treat those seeking admission in an inhumane way. Immigrants, as cosmopolitan citizens, are entitled to make a choice regarding where they want to be to enhance their life options. Their general well-being which contributes to the world wellbeing relies on the freedom to make this choice. On this note, the EU should develop immigration policies that ensure “fair treatment of Third Country Nationals,”\textsuperscript{398} especially those from less developed countries who presently suffer from too many immigration restrictions.

\textsuperscript{396} Ibid.; See also Roger Nett, “The Civil Rights we are not ready for: the right of free movement on the face of Earth,” \textit{Ethics}, 81 (1971), 212-27
\textsuperscript{397} Marchetti “Right to Universal Mobility: A Consequentialist Cosmopolitan Reading”,
Conclusion

In this chapter, I have shown that as an alternative to the closed border regime, cosmopolitans propose an open border regime. Essentially cosmopolitanism defends the moral equality of human persons, that all human beings have equal moral worth irrespective of their citizenship. Some cosmopolitans argue for a universal unqualified right to immigration based on an appeal to the right of freedom and equality which are valued principles of liberalism, while some argue that open borders will be instrumental in achieving global distributive justice.

Cosmopolitan arguments for an unqualified right to immigration would entail a completely borderless world where free movement would be guaranteed as a *basic right* but at the same time this could infringe on other peoples’ right to autonomy and self-determination. Thinking through the idea of complete openness and its implications makes one see the moral relevance of communitarian arguments especially the ones revolving around special responsibility, welfare and security. To create a balance between extreme communitarianism and extreme cosmopolitanism, a consequentialist cosmopolitan approach is therefore proposed.

Consequentialist cosmopolitanism is developed from consequentialist ethics. It considers the morally right action as the one that promotes human wellbeing. The individual capacity to choose freely between different life options is taken to be the most viable indicator of well-being. It places a limitation on *interpersonal comparisons of utility*, each individual’s choice is as important as the choices of others.

Since the individual is a ‘social being’, the wellbeing of ‘members’ who definitely will be affected by open immigration should be considered. This means that the ‘unqualified right’ to
immigration might be hindered by the rights of members who have legitimate claims to the goods they have ‘associatively built over time’.  

Such a position recognises the fact that even if migrants have a \textit{prima facie} right to migrate as it may contribute to their wellbeing and to world welfare, such a right has to be exercised in harmony with the rights of those already members. Original residents have a \textit{prima facie} right to “preserve their societal political project” as it contributes to their welfare. If the entry of some particular immigrants will jeopardise the exercise of their rights then members will be justified in restricting such immigrants because of what their presence would bring.

This means that border restrictions can be acceptable in a consequentialist cosmopolitan order, but the ethical reasons for any such restrictions have to be made crystal clear on the basis that they balance the welfare of immigrants and members, since there is a cosmopolitan right for individuals to choose their life options.

A body such as the EU and its member states, all consider themselves to epitomise liberal principles and concerns with equality, justice and rights. However, they are caught in a contradiction. Their tough immigration policies in relation to people from less-developed nations are quite “illiberal”, and the targeted exclusion of people from these particular parts of the globe at their borders is unacceptable and indefensible from the consequentialist cosmopolitan perspective advocated here.

The experiences of people from these targeted regions will be examined in the following two chapters. The field work reported on in these next chapters gives ample account of the discriminations, inequalities and illiberal practices which migrants meet at Europe's closed borders, leaving Europe far short of the ethical standards of consequentialist cosmopolitanism, as I will argue in my fieldwork analysis (chapter 6).

\footnote{Charles Mills “‘Ideal Theory’ as Ideology”, \textit{Hypatia} 20, no.3 (2005): 168; Marchetti, “Right to Universal Mobility: A Consequentialist cosmopolitan Reading”}
CHAPTER FOUR

FIELD RESEARCH: PART ONE

THE IMPACT OF THE EU'S CLOSED MIGRATION REGIME

ON THE 'IGBOS' OF SOUTH EASTERN NIGERIA

Introduction

The field research work in this thesis identifies people’s personal life experiences in relation to the European borders in order that I can be in a position to revisit the ethical debates about closed and open borders in the light of these experiences. This work is descriptive of some people’s migration experiences in and from South Eastern Nigeria. It offers anonymized accounts of human travails in the context of EU nations’ immigration policies and encounters with the embassy officials, immigration officers and civil servants charged with letting people in, making decisions about their claims, or keeping them out.

The data for this chapter is primarily generated by interviews which took place in 2011 in South East Nigeria with 35 people who have had experiences with or at the EU borders as visa applicants, returned or failed migrants or family members of migrants. This chapter uncovers the procedures migrants from South Eastern Nigeria undergo in the process of trying to cross the EU’s external borders. Migrants’ experiences show how the practices and politics of 'closed borders' make many people vulnerable either to psychological harms (such as humiliation from discrimination) or to physical harms (such as those associated with dangerous journeys). Legal migrants, irrespective of their status, often go through a lot of

400 The data for the next chapter (5), was gathered in Ireland and relates the diverse experiences of Ibos who have migrated to Ireland.
stress and humiliation in order to secure their visas, and at the same time, stringent immigration rules continue to create room for resort to all sorts of illegalities.

For Nigerians, as well as all Third Country Nationals from the global South, the granting of a visa to any of the EU countries vastly depends on one's ability to provide the 'requirements'. Those unable to obtain a visa legally, become easy prey to crime gangs who, for a price, invent all possible routes to circumvent the border barricades. The life experiences of those who have participated provide me with a vivid picture of the consequences of closed borders on which to build an ethical critique of current EU immigration policies in chapter six. This will be done in reference to the consequentialist cosmopolitan framework outlined in Chapter Three.

The research methods and research ethics used in the fieldwork have already been outlined in the introduction of this thesis. However, at this point I would add that there are three identified categories of persons chosen from all walks of life who participated in the research for this chapter:

**Category 1:** These are individuals who have gone through the process of visa application; all who have in any way experienced tight border controls as legal travellers.

**Category 2:** These are failed migrants and returned migrants who have experienced illegal migration. They are individuals who have made attempts to cross EU borders, travelling

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401 See, *Official Journal of the European Union*, 15-9-2009, L 243/33, Article 14 and ANNEX II, See also “Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Border Code),” accessed November 3, 2011, [http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/j10001_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/j10001_en.htm). As a requirement one need to show evidence of income to prove that one will not be a burden to the welfare system. In the embassies, people are asked to provide evidence of their income through a statement of account, certificates of landed properties and businesses and any other thing that proves the financial status of the visa applicant. Visas are often denied when these documents are seen by consulate officials as unsatisfactory. Most often it is only the upper class in the society who have the ability to provide these documents in a satisfactory manner and those in the lower class can only be successful if they are sponsored by those in the upper class.

either through various means of their own or who were smuggled and who in some cases have succeeded in reaching their destination. Some of them came back to Nigeria voluntarily on their own, some were repatriated, or some remain in limbo either stuck en route to Europe or living undocumented in Europe.\(^{403}\)

**Category 3:** These are family members of migrants and some others who may be involved with policy making in local/national government (village chiefs and those in government or connected to local governance in Nigeria as will be seen in Section 4.1).

Though there are three categories, those in the first and second categories have been given more attention in the following pages as their life experiences contribute immensely to the development of the argument in this thesis. Interviews with people who have had border experiences give more credibility to the later analysis as they have first-hand information. Although those in the first and second categories were of primary importance, those in the third category were helpful in understanding how Igbo society perceives migration of people.

Though the empirical data generated for this research derives from a limited, selected group from Nigeria, their experiences are not uncommon and the inferences arising from the data are therefore applicable to others classified as Third Country Nationals, who happen to be born or live in the Southern hemisphere and as such are particularly affected by tough EU immigration policies.

### 4.1 Placing migration in the context of people from South Eastern Nigeria

Nigeria as a whole is a vast country with large land mass;\(^{404}\) it has more than 250 tribes. This fieldwork concentrates on the Igbo tribe who inhabit South East Nigeria. Though other tribes

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\(^{403}\) Most of the interviews in this category were conducted face to face in Nigeria but a few were done by call/Skype.

\(^{404}\) Nigeria shares land borders with the Republic of Benin in the West, Chad and Cameroon in the East, and Niger in the North. Nigeria's land mass is slightly more than twice that of California or 923,768 sq. km. About

118
in Nigeria, like the Yorubas, may equally have tendencies to migrate to the developed world, the Igbos particularly are naturally seen to be migrants, always having a tendency to look for greener pastures elsewhere. Their history vividly corroborates this, as they have always embraced the act of migration as a way of survival both internally and externally.

South Eastern Nigeria is inhabited mainly by Igbos whose population ranges between 25-35 million people. It is an area that is occupied by the Igbos, the Niger Delta Igbos, Efiks and Ibibios who share a lot in common. Important cities in the South East include; Owerri, the heartland of the Igbos in Imo State, Enugu in Enugu state, Onitsha in Anambra State (one of the biggest commercial cities in West Africa), Aba in Abia State and Abakaliki in Ebonyi state. Other states with a large Igbo population are Port Harcourt (the biggest commercial city in the Niger Delta) in Rivers State and Asaba in Delta State. This research work involves individuals who were born or live in these different states.

Before the 20th Century, slavery took many Igbos away through the Bight of Biafra, an important point for slave raiders. Igbo people were taken to so many parts of the world, and their presence is still traceable today in many countries, like Jamaica, Cameroon, Equatorial Guinea, Cuba, and Haiti. Others include Barbados, Belize (which still has an Eboe town), Trinidad and Tobago and the United States (especially Maryland and Virginia where they are the largest single group of Africans immigrants to date). There are still various elements of Igbo culture in these places and some Igbo words are still traceable among the languages of the Afro-Caribbean. The story of Olaudah Equiano a.k.a Gustavus Vassa (1745-1795),

910,768 km of that is land; while about 13000 km is water. See http://www.business-travel-nigeria.com/map-of-nigeria.html.

405 Just like Olaudah Equiano, in our contemporary times some famous people in America like T.D. Jakes (preacher), Forest Whitaker (actor) and Blair Underwood (actor), have in recent years analysed their DNA which traces their genealogy back to the Igbo people, not to mention Paul Leroy Robeson (singer, actor and athlete) whose father, William Drew Robeson I, was a well-known descendant of the Igbo people in South Eastern Nigeria.
who supposedly was taken as a slave from this region, attests to the fact that many people were moved from this region to various parts of the world.

Apart from the forced migration of slavery and its impact, the Igbos have specifically been chosen for this research as they are famously known to be migrants. Migration has been part and parcel of their history and they are often regarded as migrants even in their own country. After the Nigerian/Biafran War, what is known today as ‘Igbo land’ was utterly devastated. The Igbos lost the war; they were physically and psychologically defeated. Schools, hospitals and people’s homes were completely shattered by war. People’s savings in the banks were not returned to them, and a whole community became completely impoverished, lacking in infrastructure.

Not only that, they became subject to systematic discrimination meted out to them by other ethnic groups who took power. In this scenario, the Igbos became strangers in their own country. The outcome of the war added more to their tendency to migrate, and this has continued to date. Okanu, a Biafran veteran who fought during the war between Biafra and Nigeria still laments the destruction of Igbo land. He nonetheless is thankful that today Igbos have emigrated to other places like the Western world, and as he says “from there, they have rebuilt their towns and villages”.

Many continue to emigrate out of the traditional Igbo homeland in search of jobs and more decent lives, but, also of importance is the fact that many Igbo migrants have remained close to their traditional homeland. Migrants through remittances are economically helpful to their family members and to their various communities’ development. In this region, there is a general perception that migration, whether internal or international, is a potential route out of

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406 I use bold type to introduce interviewees and their pseudonyms.
poverty. Igwegwe, a local chief in Ideato Imo State Nigeria, stated that his community has been much developed by the resources of people who live in Europe and America.

According to him, "they have helped build schools and community projects which everyone enjoys today". He relishes the fact that his community has a network of people in the developed world who answer to the community's needs. In the same vein, Chief Chidozie who works for the Abia State government in Umuahia, insisted that the movement of people has been very helpful in the development of the whole Igbo land. As he says, "it might look as if we are losing many brains through emigration, but we are equally producing more brains, and still gaining from those who emigrate."

The Chiefs' perspectives were corroborated by interviews with family members of migrants like Mama Beni, whose son is in Germany and Ijeoma whose brother Joe stays in Milan, Italy. Also, Ndaii Phili whose son lived in Dublin and now Manchester. Even though for some, it took a long time for their sons and daughters to start remitting, eventually as Ndaii Phili said "My son built a water reservoir for my village and gave some scholarships to various children." Many other migrants do so in this part of the world.

Though migration is perceived as a potential route out of poverty, regular/legal migration is often a privilege of the better off, the traders and indeed of many highly skilled people. Therefore many illegal migrants risk travelling by land or air from Nigeria into Morocco, Libya or other North African countries to be smuggled into Europe. At the Owerri immigration office, Judith, a woman immigration officer dealing with the issuance of electronic passports, affirmed that in the last ten years of her seventeen years presence in the immigration office, there has been an increase in the number of young men and women desperately looking for travel documents. As she says, "this is because many see migration as
a way of enhancing their life options". The interviews which follow below cover a range of migrant stories, from legal to illegal migration.

4.2.1 Case study of legal migration: From visa application to border crossing

Among my interviewees, 25 people were interviewed concerning visa applications to EU embassies and their experiences at the borders as they legally travel to destinations in Europe, though only a few will be highlighted, because of the similarity of their cases. One example amongst the many is Johnny, a lecturer in one of the higher institution of learning in Owerri Nigeria. He applied for a "category C" Schengen Visa to go to Germany in 2010 for a conference in Berlin. Though the processing of this visa should officially take 2 weeks, there were other things he needed to do before that.

As required, for him to submit his applications he had first to download, fill, sign and submit an appointment request letter together with the applicants’ passport data page, which had to be sent to the visa section of the German Consulate-General in Lagos stating his purpose of stay. He was able to do this early enough as the embassy requires him to send it through a reliable courier service "6-8 weeks prior to the intended time of travel." He then waited for the time and date of appointment to be sent to him via email. Johnny claimed, “I provided the requirements needed by the embassy to issue me a visa”.

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407 Category C Schengen visa allows a short term visit to Germany of up to 90 days and the visa is valid for visit to other 26 EU countries namely: Austria, Belgium, Denmark, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Norway, Polard, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland. See, http://www.abuja.diplo.de/Vertrtung/abuja/en/04/Visa_requirements/How_to_apply_MainPage.htm.
408 It is stated clearly that it takes 2 weeks to process this visa but it is not possible to accelerate the processing of such visa. But is only when one is given an appointment that the visa processing begins. Ibid
409 Ibid
410 Ibid.
For a “tourist” Schengen visa he paid for his hotel in Berlin, produced letters from the organizers of the conference and paid for the conference. As a lecturer, he provided information concerning his Institute, which was to sponsor his trip; he was convinced he had done everything he needed to do.

As the date for the conference drew nearer, he never got any appointment date from the Consulate-General. As he narrated,

I called the embassy and they promised to contact me as soon as possible. When the date for the conference was close, I made a last desperate phone call to the Embassy, but was eventually told I could not be given a visa as there was no time left for the visa to be processed. Having made the application for interview more than 8 weeks prior to travel as required, I was left with no other alternative than to forget the trip.

Cases like Johnny’s abound among visa applicants. This is just one case out of numerous people interviewed who had work-related reasons to be given visas, but they were simply refused a visa for reasons that were not clear. Like Johnny, Max and Chigbo who are also lecturers in higher education institutions confirmed that they experienced the same at different times in the French and Netherland’s Embassies, being denied visas at the last minute even though they were meant to go to conferences.

In a different case, in 2006 Valentine made an application to the British Embassy for a student visa, as he was offered admission to study in a university in England. He got admission after passing his TEFL English exams and he was to be sponsored by his brother who is a business man in Port Harcourt, Nigeria. All that was left was for him to secure his visa as his fees for the year and accommodation were paid prior to the submission of the application. Eventually he was denied the visa. As Valentine said,
The reason given was that the officials could not establish the relationship between me and my brother who was the sponsor. I appealed this decision and was not successful.

The following year he applied for a visa again and was still turned down. Today, people like Valentine are left wondering what one should do to be granted a visa, especially when one has fulfilled all the requirements. Since Valentine provided everything that was necessary including the non-refundable visa fee, he still reels over the lost chance given to him to study, ruined due to stringent immigration rules.

In another case, **Oguji** is a well-travelled business man who goes to Asian cities like Dubai, Beijing, Bangkok, Mumbai and Seoul to buy goods for sale in Lagos. Though he is a frequent traveller, he has been denied visas several times by some EU countries at the last minute, but this does not deter him. According to him, “I cannot go to Europe today for business because you can never rely on any European embassy for a visa”. For Oguji, “travelling from the Third World like Nigeria to Europe is very hard, they treat you at their embassies as if you are a nuisance even though you are going to spend your money.” According to him,

> [E]ven when one is issued a visa, the discriminations at the EU ports of entry are quite alarming; one’s nationality determines how one is treated, and Third World citizens are singled out.

Oguji in the past has gone to cities in the EU like Amsterdam, London and Paris for business but has since changed his route to Asian mega cities because of what he calls the “inhuman treatment given to people from Africa at the EU embassies and borders”. According to him, going to the EU embassies to seek a visa could be a waste of time for a business man like him, as European embassies can disappoint one. Oguji boisterously says, “For people like
me, I know what they can do at the borders, so I do my business in Asia and am fine, I am not ready for those harassments.”

Grace and Cynthia are two women from Nigeria who lamented how on different occasions they missed their flights in Amsterdam Schiphol because their travelling documents were “suspected”. In the case of Grace, she claimed, “they kept me behind for more verification, which made me miss my flight to Dublin”. In the case of Cynthia, who later was on time for her flight to Copenhagen Denmark, she felt miserable as she was treated with suspicion even though her visa was genuine. Eventually, the officials found out that there was nothing wrong with her travelling documents.

Several other interviewees felt mistreated in the ports of entry by the interrogations they received from officers. Participants complained of missing their connecting flights, because they were pulled behind by immigration officers, who often give more thorough checks on people who are Third Country Nationals. In the same vein, Amara, Chinazo and Uzochi who are all frequent travellers through Paris, which these days serves as a hub for international connections for many from Africa, all attested to the fact that immigration officers target TCNs.

411 Like Paris Charles de Gaulle, Amsterdam- Schiphol and Frankfurt international airport have many travellers from developing worlds to various destinations in the world, because since 2008, some airlines in these airports have waived ‘Air Transit Visas’ for Nigerians and some other selected countries travelling through Paris, Amsterdam and Frankfurt. These are airline arrangements that are operative in these particular airports. For travellers passing through Amsterdam Schiphol, KLM since May 2008 announced Air transit visa waiver for nationals of Nigeria, Ghana, Liberia, Sierra Leone and India who are travelling to UK, USA, Canada, Ireland, Japan, and Bulgaria, Romania or EEA areas. However, they must possess a valid visa to their final destination. See, “Announcement: Transit Visa Information for Travel out of Nigeria” www.klm.com. Equally, since May 2008 Lufthansa has waived Air Transit Visas for Nigerians travelling through Frankfurt to Canada, USA, Switzerland, UK and Ireland, provided they have a valid visa of the country of their final destination. Air France which is in partnership with KLM since April 2010 has waived Air Transit visa for nationals of Nigeria, Ghana and India who are in direct transit at Paris-Charles de Gaulle airport, provided these passengers are in possession of a valid visa to their final destinations as well as a valid resident permit or a valid multiple visa from the USA, Canada, Japan, EU or EEA country. This is to enable “fast and comfortable connections onto Air-France flights worldwide”. See, “Airport Transit Waiver on Air France to all destinations” www.airfrance.ie/NG/en/local/resaifovol/meilluresoffres/vta_waiver.htm.
According to their accounts, on the arrival of flights originating from Africa, officers ‘up their game’ in order to track down illegal migrants, who often originate from these regions. This is done in the guise that everyone’s passports are checked, but they target TCNs to scrutinize and verify their travelling documents. According to Chinazo “immigration officers pulled me aside on several occasions with my two other daughters”, they sometimes “end up pulling some people by the side, delaying them and interrogating them”. For her,

[I]t is not just that EU borders are strict, the mere fact is that even when Third Country Nationals have visas and travelling documents to travel, they are often treated differently and sometimes in an embarrassing manner, all because we are non-Europeans.

In a similar case, Marcel narrated how he came to Dublin in 2008; he received his visa from the Irish embassy in Nigeria and was given clearance to travel to Ireland for three weeks holiday. Being his first journey out of Africa, on his arrival at the port of entry in Dublin, Marcel was appalled by the fact that he was not allowed in as others were being. Though his visa was given to him by the Irish embassy in Nigeria, the immigration officer at the counter interrogated him consistently so as to know why he had come to Ireland and for what purpose and whom he was visiting. According to Marcel,

I gave the phone numbers and address of the one who invited me, but I was embarrassingly kept at the counter for more than an hour while the officers were making efforts to contact my host and verify the conditions of my journey.

For him, “it is embarrassing to be held at the counter while all others come and are allowed in only because of one’s nationality.”

In the past travellers were forced to obtain transit visas which costs about 100$ before getting any connecting flights from these airports. It is still the case in Britain and Ireland that passengers from Nigeria and some other nationalities must obtain a transit visa to go through any part of Britain and Ireland even if the waiting period is only for 20 minutes. http://naijapositive.myfastforum.org/archive/klm-cancels-transit-visa-for-nigerians_o_t_t_2677.html.
4.2.2 EU border policy implications: Case studies of irregular migration

The present regime of the EU's tough visa regulations for Africans indirectly creates openings, where many who are not able to meet the visa requirements or who are denied visas, consistently take the option of negotiating their way through illegal migration. Even those who are granted short stay visas are tempted to overstay because they are not sure of obtaining visas to return at another time. Consequently, there seems to be a growing tide of 'linkmen' or 'migrant smugglers' who cash in and scout for willing clients who will brace themselves for illegal journeys to Europe. From what has been observed in the course of this research, one cannot but say that the business of linkmen and smugglers is booming due to strict EU immigration policies.

It has to be said that stories of people's experiences vary, but one consistent thing that emerges is that people are making desperate efforts to move or migrate to Europe, irrespective of the EU's tough visa regulations for travellers from African regions. Some migrants' experiences are highlighted below to show the various ways that the tough immigration policies of the EU are opening doors for illegal migration, asylum seeking and migrants voluntarily or involuntarily overstaying their visas.

4.2.2.1 Chinedu: Taking 'the boat of death'

Among many people who participated in this research project a young man named Chinedu's story seem to crystallize the plight of illegal travellers. Chinedu, a lively Igbo young man in his twenties shared his ordeals as he tried to search for a better life, like other young men do in many parts of the developing world. Born in a poor and lowly background in Orlu Imo State Nigeria, Chinedu has two other brothers and three sisters. His father earned a meagre amount, working as a janitor in a small clinic, and his mother primarily was a house wife.
Because of poverty in the family he could not finish school, as he had to leave early at the age of 17 to go and stay in Lagos with a relative to learn a trade as an "apprentice."  

In the fifth year of his apprenticeship, he came in contact with a middle man named ‘Bayo’ who promised to give him a connection to Europe. He was told that a visa to Europe will be hard to be secure as EU embassies deny most people visas. Moreover, it might cost him a fortune with no guarantee of being secured. Bayo offered him the alternative of taking him to Morocco from where he would be taken to Spain through the Mediterranean. With much enthusiasm and without asking for many details, Chinedu hurriedly handed the sum of $2,000 to Bayo as agreed. After a few weeks elapsed a visa to Morocco was secured.

Chinedu stole away on the day of his journey around 5am in the morning; he was helped by a friend who came with a car to the airport in Lagos where he boarded a flight. He landed in Rabat, Morocco and quickly called the contact number. Luckily enough the ‘link-man’ was already waiting at the airport as he had been duly informed about Chinedu’s arrival. At this time, Chinedu realized that a man who had been conspicuous on the flight he took was equally a client of the ‘link-man’.

The ‘link-man’, a middle aged man of Arab descent hurriedly whisked them away. They were told by the linkman that the majority of migrants are smuggled from sub-Saharan Africa by road through Senegal, Gambia, Mauritania and the Western Sahara from where they come into Northern Morocco. He took them to a location where they had to share accommodation with three other black Africans (Dialo from Senegal, Idrisou and Usmane from Mali); they had taken the same option of trying to get into Europe by crossing the Mediterranean. They

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412 Igbos traditionally give their sons to relatives or friends so that their sons can learn trade for some five or six years after which they are given a little money by their master so that they can start their own trade. This practice has helped many Igbo people to stand on their own today as the practice continues even in present Igbo societies.
were all driven to the North coast of Morocco to the border with Spain at Ceuta and Melilla. Ceuta and Melilla are initial targets for many migrants.

According to Chinedu, “this was the beginning of our ordeal as the man who had brought us disappeared into thin air only leaving instructions to another man”. In this place, “I met all sorts of people from the African continent, life was terrible, and it was hell”. According to him,

[W]e were living like animals, in makeshifts camps, desperately waiting for the right moments to climb the fences. Several attempts to cross the walls of Ceuta were unsuccessful for me as we were always warded off many times by border guards. At different occasions, I saw desperate migrants who got seriously injured trying to jump the walls.

Having been unlucky Chinedu incidentally negotiated with another smuggler who offered to take him by boat and cross him over to Europe through the Southern coast of Morocco. They agreed on a fee of 900 Euros, and he was taken from the make shift camp to the house of his new ‘middleman’ who was to take him to the South of Morocco. He had to say goodbye to his friend Dialo who had no other money left with him, and was therefore left with no other option than to stay and keep trying his luck like the rest, to cross over the Ceuta and Melilla border.

On arrival at the Southern coast, it dawned on him that there could be terrible suffering involved in this journey and he saw many others who were desperate to cross over to Europe. As he explained,

[T]his was the time I realized I could be caught and sent back or be injured. I even could die, and not just dying, but drowning. There were other people scrambling to get into Europe, Arabs and black Africans taking all sorts of risks to escape the border patrol.
It was here that he learnt that as migrants approach the shore some do throw away their passports; this is a common practice among illegal migrants who fear being deported to their native countries. As he waited for the trip, he met two other friends; one Nigerian and the other with a Cameroonian passport, though he started his journey from Nigeria too. One Monday morning, his smuggler alerted him that the journey would be made on Wednesday morning; they were to be put in a boat heading to the Canary Islands in Spain.

To his utmost horror the boat they were made to travel with looked almost like a death trap, a ramshackle boat that was overcrowded with passengers. He had no alternative than to enter the boat as his money had already been taken. The boat in every sense was a boat of death; he had small biscuits and bread and a few drinks in his small bag as they were not allowed to carry heavy bags due to the conditions of the journey.

According to Chinedu, this journey took them four days and nights as the boat driver tried to manoeuvre and avoid foreseeable dangers. Part of the danger is that EU border guards persistently chase migrants’ boats, to ward them off. As he frankly says,

[M]y biggest fear was that the boat was overcrowded, and sometimes the waves in the sea were almost capsizing the boat but eventually we made it. We arrived at the shore in the middle of one night; I do not know the exact time as I had lost touch with chronology after sleepless fearful nights in the sea where we were at the brink of life and death.

Though Chinedu eventually made it to the Canary Islands, he knew of many tragic deaths that occurred concerning migrants. As they travelled in the sea, two people were thrown into the sea because they had died. Again, before their journey, they were told that a migrant boat had capsized near the Moroccan coast. Smugglers try to evade the border guards and they do this by risking people’s lives.
Between Africa and Europe, there are scenes of pathetic, tragic deaths. Desperate migrants are constantly paying smugglers to be ferried in overloaded boats as they embark on nerve-jangling journeys across the sea to Europe. Some who make these payments never live to see the end of the journey; often some meet their untimely deaths either by the boats capsizing, or being thrown into the sea because of overcrowding to save others. Some others equally die of diseases while on board.

Many leaky vessels trying to avoid border guards end up capsizing or being ripped apart by ferocious sea waves. Too many deaths of migrants have occurred between Africa and Spain; the sea has taken a lot of African migrants desperate to cross over to Europe. In the Canary Islands, Chinedu got connected to a man of African descent, who hosted him in the Canary Island of Las Palmas. On the island, he did many illegal things like selling drugs, but the most salient thing is that he had stayed for about a year and six months before he was able to save and get an arrangement to move out of the Island. He got involved with a girl (Isabella) who helped him get papers which eventually took him to Barcelona where they lived. As he narrated,

[T]oday I have set up a legitimate business in Nigeria with the help of my wife Isabella. I have established my business in Nigeria, and I enjoy freedom of movement like any other European at the EU borders.

4.2.2.2 Ifeanyi and Dan: Overstayed their short-stay Schengen visas.

Ifeanyi went to Germany as a 23 year old on a short-stay 90 days visa. He was desperate to stay in Europe, as he had been denied a visa more than three times before being successful. When his visa expired, he was condemned to hiding, always staying indoors in the house of the man who sheltered him. From the day the visa expired Ifeanyi’s life became a nightmare.

The fear of being caught made him immobile but at the same time, like other “illegal migrants”, he had to look for casual work so as to keep body and soul together. He lived as an undocumented immigrant hiding from one place to the other, avoiding the police.

Ifeanyi eventually made his way to Austria. He hung out in pubs and clubs and during these outings, he got involved with a much older lady who promised to shelter him and give him papers if they married. As he puts it, “I could not imagine hanging out with someone much older than my mother, but with the enthusiasm of gaining my papers and staying legally, I had no alternative other than to accept the offer.” Today Ifeanyi has papers thanks to this “strange relationship” as calls it.

Another ‘marriage of convenience’ story was related by Oluchi. She studied in Dublin in 2006 and 2007, after completing her Masters in International Relations she had 6 months to find a job, but was not successful. She then travelled to Germany on the invitation of a friend and it was in Germany she met someone who proposed to her. As she said, “though my would-be husband is twice my age, I felt I had no other option other than to be illegal or return home”. Though Oluchi in her frankness is not actually enjoying this relationship, she thinks it is the only opportunity for her to live legally.

For many migrants, coming to Europe and overstaying like Ifeanyi can be a way to stay indefinitely. As many do not have the hope of securing a visa again because of the ‘arbitrariness’ of the granting of Schengen Visa, they decide to go underground. Ifeanyi introduced me to Dan whom he met in Austria, and both had similar stories. Dan lived illegally in Vienna for four years; he was brought to Holland on a visiting Schengen visa through a middle man in 2004. He paid heavily to the middle man even selling off family land they owned at Awka. He borrowed a lot of money to make the journey and he will have to pay off his debt once his life becomes better. Dan clearly stated that;
While living in Amsterdam, before the expiration of my visa, I made my way to Vienna, Austria where I was linked up with another man. In Vienna, I went underground even though my visa expired, living a life of seclusion. The life of an illegal migrant is a life of fear, not knowing what could happen at any time.

The fear of being caught gave Dan no peace in his mind for the duration of his stay. To be caught and deported was something which Dan always prayed against as he sold all his belongings to come to Holland on a three months visa.

Dan lived as an undocumented immigrant hiding from one place to the other, avoiding the police, avoiding city centres, places of entertainment, large shopping centres and night clubs; staying indoors except going to a job. Dan’s situation of illegality also made him vulnerable in places where he worked as they knew he was undocumented, but turned a blind eye to that fact. Being an illegal migrant creates much vulnerability, leaving one with no voice to demand rights or even ask for better pay for fear of being turned in to the police. Many illegal migrants live such torturous lives, forfeiting their real identity as they often do away with their documents or pick up other names.

This is the situation borders and immigration rules have created due to the inability of many TCNs to extend their visa when they expire. Again, the fact that visas are hard to secure pushes many to risk overstaying, and some willingly accept marriages out of desperation. In the case of Ifeanyi and Dan, having travelled to Germany and Holland on three month visas and having no other way of extending the stay except by going back to their home country was unthinkable and the possibility of getting another visa unpredictable. It is a risk many are taking, coming into Europe and disappearing in the crowd, preferring to lose their identity rather than being locked out at the borders. Being an undocumented migrant affects one’s entire life as one is conditioned by the fear of deportation. As an illegal migrant the fear of being caught is imminent and such fear leaves one with no peace.
4.2.2.3 Chima’s failures in securing a visa made him overstay when he got it

Chima grew up in the South Eastern Nigerian city of Enugu; at the invitation of his relative, he made an application for a visiting visa to Holland in 2005. At the time of his interview at the Embassy, Chima got his chance to go to the counter and he carried with him the “requirements.”^414 After some interrogations concerning the validity of his papers he felt that his luck had run out as the officer did not seem convinced about the documents presented. Chima was told that his documents would be verified, and that was the end of the story. His visa was denied on the ground that his documents were not genuine. He tried to figure out the ground on which the denial was based as he had given genuine papers; he remembered what a friend had earlier told him “your visa sometimes will depend on who you meet at the counter.” He vowed to try again as those who fail at the first time might succeed at the second or third time.

He applied again for a visa to go to the Netherlands in the following year 2006, and eventually he was granted a three month visa. According to him, he had used the same set of documents he used in the previous year; nothing much was changed, except the dates and current bank statements. It became apparent to him that the issue of granting visas in many cases could depend on who is at the counter. He could not see any reason why he was denied a visa in 2005 because he used almost the same documents when he was granted a visa in 2006.

For Chima “getting a visa from these embassies is uncertain, people travelling for honest and obvious reasons are denied visas daily”. In terms of the requirements needed for securing a

^414 The requirements he carried included the letter of invitation from his relation, his passport, a letter from the food company that he worked for, a statement of account belonging to him and the other which was sent to him by his relative from Germany.
visa, he sees arbitrariness and inconsistencies at the EU borders. One can be denied a visa for any reason and the same reason can be ignored or overlooked at the second or third trial.

Chima moved to Amsterdam in 2005. Though he was supposed to go on a visit for three months he was deepily convinced that this opportunity must be used to the maximum even if it would mean his overstaying. Many Third World migrants, out of desperation take the risk of overstaying their visas once in the EU, since they are not sure of being allowed in again. While in Amsterdam, though he was not authorized to work, he could do a lot as many undocumented workers do, like packing in the fruit store, going to the farm to cut flowers or pluck tomatoes. Employers sometimes collude and cash in on vulnerable undocumented workers; though they are helping them by employing them, they are making enormous money as these vulnerable people accept anything as pay.

With such a change in life, Chima convinced himself that he must overstay his visa. The impossibility of extending his visiting visa meant he was left with no options because going back to the former life he lived in Enugu was not an option for him anymore. Chima knew that his relative could not tolerate his decision to overstay his visa and he finally fell out with him. Falling out with his relative meant being left on his own with no papers, no visa. He soon began to hang out with refugees and other illegal migrants, sleeping from one place to another and avoiding any contact with the police. Chima clearly said;

I quickly concealed my passport and went to apply for asylum, concealing my passport meant hiding my true identity, changing my name, my ‘nationality’ and probably the story of my life. Migrants do this to ensure that they are not placed on the list for deportation as their travel documents might contradict their reasons for asylum.

He claims his reasons for seeking asylum were not accepted, and he quickly disappeared making his way to Rotterdam. In Rotterdam, he did all menial jobs he could get, sometimes
sleeping rough. Though this was the case, he was able to make savings and send some money home, as he was not sure of what could happen the next minute. He could not open an account in Holland because of lack of identity and fear, so he concentrated on sending his money home. He lived undocumented for three years undetected.

After three years, he got tired of the rough life he was living, he wanted a way out. Since he has been living as an undocumented migrant, going back to his country became a problem. He sought desperately for help as he was then ready to go back confident that at least he had saved some money for himself at home. During this time, someone offered to help him as he never wanted to be deported like other interviewees Melum and Anii who were forcibly removed from the country. They were deported that same year for being considered illegal migrants in Holland. Melum stayed for almost a year when his visa had expired while Anii overstayed for about two years. As at the time of the interview, Melum and Anii were still looking for opportunities to travel back to Europe, but later information indicates they eventually travelled to Canada and Australia respectively.

Chima had to pay about 400 Euros to the man who offered to secure for him travelling papers, on the ground that he had lost his travelling documents. His journey back to Lagos was facilitated, and he was helped out of the country. According to Chima,

[T]oday, I have succeeded in setting up a business in Enugu Nigeria; I drive a remarkably smart car and I have not thought of going back to Europe. Because, I feel my life has tremendously changed, as I can afford many things I could not afford before my journey to Europe.

His “illegal” stint in Europe was a catalyst to his new life, but one obvious fact is, he lived a life of illegality because of the strict border regime. Due to the slim chance of people getting
visas to Europe, many take risks through illegal migration, or overstaying their visa and becoming illegal.

4.2.2.4 Ikenna’s Hannover experience

Immigration laws in Europe have created a scenario where lots of third country men and women do all sorts of things to get papers. Ikenna lived in Hannover Germany; he first came on a visit to Dusseldorf but later made his way to Hannover where he lived a life of undocumented migration. One way for people to escape from ‘illegality’ is to get married. According to Ikenna, most of the nights he joined his friends to hang out on some dangerous street corners and bars though they feared any contact with the police or “eke” who may eventually look for documentation. For him,

[S]taying as an illegal is like hell, getting a European wife or husband is the surest way out of the hellish life of illegality, some do succeed but some do not. If you do not succeed today you can succeed tomorrow; ‘guys’ will keep trying.

For many illegal African men in search of a better life in Germany and many other EU countries, getting married legally to an EU woman is a dream. This is one of the surest ways to securing employment and settling down. With the papers, one will be sure of getting a job to do rather than hiding, only to be used or abused by some employers who are aware of their illegality. With a German girlfriend and a child, one can eventually get a residence permit as one will have a family or child to look after.

For Ikenna, “hanging out in streets and pubs is a very dangerous thing as one can be mugged or even killed”. In the city where he lives, “illegal African men have the desire to get a German spouse, and this becomes difficult sometimes, because, many Africans in nightclubs scramble for the available ladies”. Because of the tight immigration rules, migrants look to

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415 ‘Eke’ is an Igbo word for python (a type of snake). Young people often refer to the police as ‘eke’.
exploit the only loophole they find in their search for a better life in the EU countries. He was able to recount some of his undocumented colleagues who succeeded and now live as EU citizens; one of them named Chika got married to a German lady and today lives with his wife and two children in Dortmund. Also, Emeka succeeded in getting married to a German woman and that gave him papers, though they are not living together now. He got the papers he wanted and moved to Holland where he is now married to a Dutch woman.

While some of these marriages last, others are purely for convenience and as soon as they get their residence permits, they divorce their spouses. Some go back to marry their loved ones or anyone they choose to marry. Sometimes, when they end up staying in these marriages, it becomes crystal clear that these marriages have taken place not because of love but because of desperation for papers. The situation is that there are various marriages of convenience that are arranged in many parts of Europe. Arabs, Asians, Europeans and black Africans are all involved. Women who are EU citizens sometimes are ready to enter into these marriages in exchange for cash.

Six interviewees I talked to claimed they knew people who paid to get married to British and EU citizens, these payments could range between 5 and 10 thousand Pounds or Euros. Such marriages end as soon as the wedding is over, the kisses are most often arranged, and many a time, the marriages are not consummated as it is not part of the arrangement. At the end of the marriage, each goes home happy. The woman goes with her cash while the man gets his papers sorted out. It is a cycle that almost looks unstoppable as people do these things out of desperation for survival. Some of these marriages are unnoticed but they have become realities of the modern day system of citizenship which is a feudal privilege that enhances ones' opportunities.416

In search of membership, desperate migrants end up doing many things they would never have done if all things were equal. For Ikenna, “in Germany people even get married to Penner.”* Stories have been told of migrants who go to the extent of taking the pain to clean such people up to start a relationship with them. A ‘Penner’ can be given very little cash, and the rest go to the middle men who organize these marriages. What happens after the trip to the registrar’s office can be anybody’s guess, but the reality is that illegal migrants can do anything to stay legal in Europe. Ikenna eventually succeeded in regularizing his stay and he is a successful business man presently married to a German lady whom he loves very much. From one part of Europe to the other stories are similar, and probably will continue to be similar in the present arrangement of borders.

In a different scenario, a young woman Tochi who participated in this research, recounted how in 2008, she went to a conference in Italy with other colleagues who work in the health department in Lagos; among them were four women and three men. After the two weeks conference in Rome on the day they were to travel back, a young lady named “Esther”, who was due to travel back with them, went missing. They returned home without her, and as at the time of this interview, the young woman has never returned to Nigeria. It was gathered she made her way to the Northern part of Italy and must have disappeared underground. Such stories abound as people do not easily get visas to European countries; any little opportunity of being in Europe often tends to be utilized once and for all.

4.2.2.5 Chikwe: Reaching Europe through South Korea

Chikwe, a 28 year old man, was doing well in business in Port Harcourt but at the same time wanted something more to improve his life. In his business line, he had witnessed several

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417 A ‘Penner’ or ‘Obdachloser’ is a homeless destitute who only live in streets, bus stations or train stations, often changing locations. Such person can never be sure of a permanent home.
people travelling abroad. In his mind, he believed that one day he himself would travel out in search of greener pastures. In his home town near Onitsha, many migrants often show their financial commitment to their families and communities through remittances. This is continuously manifested through social and economic investments, activities and other performances.

Migrants show their attachment to their communities through social reproduction, buying houses, constructing houses, opening up businesses and contributing to community developments. On this note, migration overseas becomes highly attractive. Many people are enthusiastic as individuals who have gone out are seen to have more opportunity in accessing a better life, good education, quality life and splendid jobs.

Chikwe’s friends were able to link him with a middle man named ‘Uka’. In the year 2007, Chikwe sold off all his stock gathering about 1.5 million Naira in cash (about 7,000 Euros) so as to make a deal with the middle man who was to help organize his travel. On meeting the middle man, he was given two alternatives, to travel to Europe directly or to travel to a part of Asia and then from there be taken into Europe.

To travel to Europe directly was to be a little bit hard as EU embassies are too strict, therefore his chance of entry was only 50-50. According to him,

[M]y link-man assured me that travelling through Asia would be easier, as I would also have the chance of working for about three months in Seoul, South Korea or Kuala Lumpur in Malaysia and then be given a visa to proceed to Italy. I opted for the second and longer route since I would have the chance of recouping some part of my money through work before reaching my final destination.

At the time of his travel, he met two others who travelled to Malaysia, though he never made it to Europe because he got involved with drugs in Seoul, the other two made it to Europe through Malaysia. Chikwe quickly returned to Nigeria because he was implicated in a drug
raid. Though he returned home, he can count many who have travelled with such an arrangement and today they are living in Europe. People do not mind how long it takes them, what is noteworthy is that they are finding ways to get into Europe even if that will make them go right round the world. Some travel to any Asian country like Korea, China, Qatar or even Bahrain and live as a resident for some time before finding their ways into Europe.

4.2.2.6 The case of Chubi: living underground in Spain

Chubi recounts how one fateful morning he stumbled into a man who promised to change his life forever. Sitting and waiting for customers in his boutique shop at Ariaria market Aba, a well-dressed gentleman came looking for a specially designed T-shirt. As Chubi entered into more conversation with his client he realized that he was curious to know his life ambitions, and he suggested to Chubi that a trip to Europe could change his life forever, where he could work and earn better wages and eventually have a more comfortable life. Chubi had often wondered how he could make it to 'obodo oyibo' (Western world) as others have been doing.

After a few weeks, his new friend offered to help process his papers if he paid appropriately. He gave him two options, going to Spain on a three months visa or waiting for his friend to come home by the end of the year to travel with him. He assured him he would be able to hand him a visa if only he would pay the appropriate amount. In that case, the man would tidy and package his papers and make sure that the appropriate papers were submitted. For this to be done, he had to hand him 500 thousand Naira (an equivalent of 3,000 Euros). This was only to tidy his papers for submission to the embassy so as to be sure of obtaining visa; his air ticket and travelling allowance were not included.
He was made to pay an initial mobilization fee of 300 thousand Naira to set the ball rolling then he was expected to pay the rest when the visa arrived. In a few weeks, his requirements for a visa were assembled – an invitation letter from Spain, the bank statement of the one inviting him and the proof of address and a ticket reservation which showed his itinerary. Getting an appointment to go the embassy was another gruelling experience; he eventually got the appointment and went for it. He was issued a three month visiting Schengen visa to Spain. At this time, he had sold all his stock in the market to raise more cash; he also borrowed from friends and family on the assumption that he will pay back.

On the day of his travel, he arrived at the Spanish port of entry in Madrid after travelling with KLM which connected him to Span Air in Amsterdam. On his arrival at the port of entry, he recounts how the idea of borders became real as he was kept waiting at the Spanish Immigration post. He never spoke Spanish, but the waiting became so frustrating that he suspected something was wrong. He was questioned several times in English until he was made to realize that they were not going to let him go through any time soon. The immigration officers were not fully satisfied with his visa and they were trying to establish some contacts with the invitee who lived in Madrid. He was granted entry at last after border officers made several efforts to establish the veracity of his documents. In all, Chubi clearly felt that he was being treated in a manner that shows he was not welcomed in that country.

Having been allowed entry into the country, Chubi overstayed his visa and eventually lived illegally for four years before he was deported. As Chubi narrated,

I over Stayed my visiting visa; I lived unnoticed, hawking sunglasses and watches on the Spanish beaches in Barcelona where I finally stayed. I was eventually apprehended and deported in 2009.
Today, he works in a factory near Abuja. Deportation of illegal immigrants in Europe is something common, Chubi’s case is one in many. In a similar case, Anyi took about 7,000 Euros from family members in 2009. He spent about 4,500 Euros to be smuggled to Ukraine, though he had an eye on getting into Germany later. He stayed in Kiev for about one year and was eventually deported. His mother Mama Enda seriously lamented the plight of her son and the whole money that was spent for his travel. As she puts it,

[T]he White man is cruel to my son, he has become confused after losing everything and being forced back home, we had hope he would be the breadwinner, but now, everything is gone.

The same applies to Olisa, who equally paid heavily to middle men to be taken to Europe. He was brought to Romania Bucharest from where he hoped to get into any of the central or western European countries. Olisa was deported in 2010, and the memories of the deportation are still fresh in his mind. He did not talk much about it as he is still seething in anger. He is still looking for opportunities to travel to Europe. Such cases abound, people who have spent fortunes getting to EU countries, but in the end were forcibly brought home due to illegality.

4.2.2.7 Ken; trapped in Dakar Senegal as he negotiates his way into Europe.

Ken has been in Dakar Senegal for the last two years. His link-man brought him to Senegal so as to be smuggled into Europe. His mother at home Mama Julie has high expectations that Ken will eventually reach his destination, like the rest who are abroad or even come back home safely. Julie recounts how desperate Ken was to find his way to Europe, irrespective of the fact that it might take him through some excruciating pains, as he travelled by road from Nigeria into Senegal. His brothers did not support his travel as they wanted him to take a more comfortable way of travelling rather than being smuggled illegally.
Since Ken made this hazardous journey into Senegal, his smuggler has long disappeared and cannot be contacted even though he paid more than 4,000 USD to him. According to Ken who participated in this research via Skype,

I am left to work and earn some money so as to negotiate my way again into Europe or back to Nigeria. Smugglers are demanding from me the sum of 4,600 Dollars to be taken to Europe via Brazil. Alternatively, I was asked to pay 7,000 Dollars to be smuggled directly to Portugal.

Ken seems to have run short of money and has been making desperate appeals to his brothers and relations for help. His elder brother named Okee, who is able to boost Ken financially, does not want to get involved, as he wants Ken to work and bail himself out of his misery. Such is the plight of illegal migration, travelling to Europe and being stuck in Senegal for almost two years not knowing whether to continue the journey or go back home. Ken is not alone in Dakar Senegal; he can count several migrants who are camped at different locations doing menial jobs, hopeful of continuing their journeys when the time is ripe.

For Ken, going back home would imply that he would be in massive debt as he had borrowed quite a sum to make the journey, on the grounds that he will pay when he becomes successful in the journey. At the same time going forward in the journey would require more money and no one seem to be able or willing to help Ken out. He seems to be in a limbo, a desperate situation and a point of no return.

Ken got stuck in Senegal, simply because his previous connection had broken down and he required more money for a new connection, which he does not seem to have. Now he has become vulnerable and growing more and more desperate. His initial plan was to evade the European tough borders as he could not provide what was necessary for him to travel legally. It has to be said that he was lured into such an illegal and dangerous trip, because of the
growing market of ‘smugglers’, whose businesses are booming partly because of impenetrable EU borders.

### 4.3 Holding the EU border lines: A synthesis of migrants’ experiences

From the interviews above with people who have shared their experiences of visa application, legal and illegal movement, overstaying etc. it is clear that in their own perception the EU border controls appear to be tough, arbitrary, discriminatory and even cruel. Equally obvious is that although these borders are consistently being fortified and strengthened, they still appear to be failing to hold the line as people decide to overstay visas or migrant smugglers facilitate entry.

As the interviews revealed it is difficult for average, third country nationals who do not have family in Europe to travel legally to any of the EU countries. One has to be very affluent, well-connected or sometimes just very lucky to provide the requirements that might lead to the granting of visas. Amongst the interviewees even those who had travel reasons related to their work and who could demonstrate all the ‘requirements’ were subject to untransparent and arbitrary decisions about their applications for visas. The borders become even more vicious for those who resort to the irregular routes, when border guards are used to chase and ward off migrants in the Mediterranean Sea and at the EU borders. From what has been seen in these peoples’ experiences it is arguably discriminatory that untransparent bureaucratic measures and severe policing measures are used to prevent movements of TCNs, while these measures are not applicable to others from developed countries.

Though EU borders appear tough and border armed guards consistently ward off illegal migrants, it is quite noticeable from many of the interviewees that desperate migrants are not
deterred by this situation. Migrants look for any opening through which they enter and stay in the European “fortress”. Though there are double-ringed walls constructed to prevent migrant invasion of Ceuta and Melilla, such walls have arguably failed in stopping illegal migrants. The EU coast guards patrol the narrow stretch of water between Morocco and Spain in search of ramshackle rafts used in ferrying African migrants across into Europe. Their activities facilitated by the FRONTEX do not seem to have stopped smugglers from making these dangerous journeys. Smugglers still have clients who are willing to take these “boats of death” at any cost.

There seem to be something perverse about forcing migrants through tough immigration control, to risk their lives and do things that eventually can lead to their death simply because the “European Fortress” must be protected, and this is prioritized over untold human suffering and death. The hard reality is that stringent visa regulations for third country nationals continues to push more desperate migrants into the hands of people’s smugglers whose networks today span through European, Asian and African cities. As at 2005, research showed that people smugglers based in the EU alone rake in about 4 billion Euros (2.7 billion Pounds) a year. These profits come from arranging papers and travels, arranged marriages for people from Asia and Africa, and also through the falsification of documents, like residents permits, to allow immigrants work legally.

Though this research has focused more on migrants from the South Eastern part of Nigeria, it is quite revealing that in the past few years smuggling of migrants from many other parts of Africa into Morocco and to Spain has become so lucrative that it might be a more money yielding business than drug trafficking. Rickety boats constantly set off from Moroccan coasts to the shores of Spanish Canary Islands or Italian Island of Lampedusa or even Malta.

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419 “Decapitating the Snakeheads” The Economist, October 6, 2005.
Though some die in the way as boats capsize, some eventually make the journey without being caught. From the accounts of participants in these interviews, migrants on reaching these Islands disappear and go underground in Spain, Italy and other parts of Europe.

This research has shown that there are people who are determined to risk their lives and their savings to make journeys whether legal or illegal to Europe with the hope that there are better prospects in the EU territories. Though some of them are aware that illegal trips to Europe can be perilous, there is always the hope and enthusiasm that one will be successful. No matter how tight controls at EU borders are, immigration of people from Africa and the Southern hemisphere to the EU seem to be inevitable as people struggle to pursue their ambitions, determine to provide remittances for families or pull away from poverty, flee persecution or war or corrupt governance and even environmental hazards like drought and famine. On these grounds desperate people who are refused legal entry will continue to risk their lives trying to travel to Europe.

Though the number of illegal migrants may not be a formidable multitude or a “band of invading armies” as it is often exaggerated, the mere fact is that out of desperation there are people who want to risk everything in crossing into the European frontiers as the EU zone is seen to provide more life options. It was also clear in the interviews that those who have legally made their way into Europe are tempted to overstay their visa by living illegally or by entering into marriages/arranged marriages, because they are not sure of being given the chance to return. These scenarios are likely to remain the case, in so far as the “push factors” in the sending countries and the “pull factors” in the destination EU countries remain unchanged. It is probable that the EU will not be successful in holding the borderlines against unwanted immigration with the current border regime.
Conclusion

In this section of the fieldwork, it has been shown that migrants particularly from South East Nigeria, but also from throughout the global South, are continuing to search for a new lease of life, and this search will continue to draw them to the EU frontiers. The argument that tight immigration borders policies keep away immigrants appears to hold little water; it seems to be an inflated construction as illegal migration is still on the increase. From the experiences of people gathered here, migrants have been forced to equip themselves with numerous tricks or resort to desperate measures. They have learnt to circumvent border guards and the tight immigration checks, even if it means dying in a last ditch attempt to cross the sea. Though EU borders are purposely meant to limit the entrance of Third country nationals, the strictness creates more loopholes for illegalities.

The experiences of third country nationals at these EU borders reveal the contradictions in the claimed ‘liberalness’ of the EU nations. The universal human rights and conventional international laws which the EU ascribes to, and which are intended to protect the integrity of each human person, including the illegal immigrant, apparently are not used as ideal guidelines when considering the way many TCNs are treated as narrated in their border experiences. Moreover, despite the EU’s promotion of the liberal ideal of equality, it is obvious that the EU external border regime is quite selective as some peoples’ movements are highly curtailed while some others enjoy almost unimpeded freedom of movement into the EU countries. This is all very ironic given that this is happening at the borders of the so-called ‘liberal world’, which has cast itself as a protector of people’s rights in Afghanistan, Iraq, Pakistan or Libya and beyond all European frontiers.

The next chapter produces further evidence of the effects of the human impact of the EU’s closed border regime, this time with emphasis on Igbo migrants who are resident in Ireland.
Once past the EU's physical borders, the external policy controls overlap into the internal surveillance of TCN migrants as EU countries have developed a variety of categorisations and internal policy instruments to control immigrants from Third World countries who are resident in the EU. This means that effectively state borders are replicated in various ways in the day to day lives of TCN immigrants in EU countries, such as Ireland. It is to these experiences that we now turn.
CHAPTER FIVE

FIELD RESEARCH PART TWO:

MIGRANTS FROM SOUTH EASTERN NIGERIA IN IRELAND:

THEIR EXPERIENCES OF ‘CLOSED’ BORDERS

Introduction

This part of the fieldwork focuses on immigrants who are already in Ireland and their migratory experiences. This chapter specifically discusses the experiences of migrants in Ireland who have come from the same region of the South Eastern part of Nigeria as those interviewed in chapter four. It highlights the human experiences behind the strict border controls, particularly those which stretch beyond Ireland’s points of entry. As people subject to immigration controls, these migrants share the stories of their lives and how they are affected by the present regime of closed borders.

This chapter focuses on the experiences of 30 Ibo immigrants who were randomly selected from all walks of life, and who live in different parts of Ireland. Though they are randomly selected, these people's experiences exemplify common stories in the present regime of tight border control. The interviews took place from 1st September 2011 to 30th June 2012 at different locations around the country. The same ethical safeguards which were applied to the interviewees in chapter four were adhered to here.
The chapter is organised around two identified categories of people who participated in this research work. In the first category are those who are "legally resident" in Ireland including students and refugees. Their interviews are reported in sections 5.1-5.3. Those legally resident chose to participate in the interviews because although now legally settled, the majority of them have gone through various immigration difficulties to gain legal entry and still face the 'internal borders' of state surveillance and difficulties while they move in and out of the country or even renew their visas.

Those who belong to the second category covered in sections 5.4-5.5 are asylum seekers and those with no legal status e.g. those who have overstayed their visas, those who came illegally especially from the UK and those living undocumented. Many of these interviewees live clandestinely on the margins of the society, because of their inability to gain a legal status. In addition, some individuals who work with migrant-support NGOs were also interviewed and their interviews conclude the chapter (5.6).

Among these participants, whatever their 'categorisation', around 80 per cent of them agree that their migration into Ireland has been successful as their lives have been transformed economically even though they still face the challenges of the borders. In all, this chapter recounts positive and negative stories of people concerning their experiences of immigration policies in Ireland. For some, the years spent in Ireland have brought them close to naturalization and citizenship; while for others, the years spent have brought desperation and fear of the unknown.

\[^{420}\] In this research work, those ‘legally resident’ can be understood to be immigrants permitted to remain in Ireland under various immigration stamps including those who have gone through the process of naturalization. The Irish immigration webpage offers a list of categories of people who may be permitted to remain in the state, these people can be issued with immigration stamps 0, 1,1A, 2, 2A, 3, or 4. On these various stamps, they can rightly be seen as lawfully permitted to remain in the state. “Irish naturalisation and Immigration Services,” accessed June 1 2012, http://www.inis.gov.ie/en/INIS/Pages/Stamps.

\[^{421}\] Asylum seekers may rightly be seen as having legal status as they wait for their petition to be answered, but they are in legal limbo as they have not been given full acceptance and their petitions may be rejected or accepted.
5.1. Living and working in Ireland: Chime, Eme and Obi

The life experiences of **Chime, Eme** and **Obi**, provide a telling examples of how migration can transform people’s lives. All three have settled permanently in Ireland as immigrants from south eastern Nigeria. They seem thankful that they are quite settled in Ireland though they constantly go through the physical and mental barriers placed by the borders. Chime is a taxi driver in Drogheda, Eme works with one of the colleges in Dublin while Obi is a business consultant in Galway. For all of them as Non EU migrants from the Third World, borders are fraught with many contradictions which are not experienced by others outside the Third World who cross the same borders. Among these three interviewees, there seemed to be an agreement that life can be tough in Ireland for TCNs because of immigration rules, but despite this toughness, one thing noteworthy is the acknowledgement that their lives have been economically transformed.

5.1.1 Chime

**Chime** was born in Okigwe Imo State in the South East of Nigeria; he was the eldest among four children. He could not further his education beyond the secondary level because of the family's paucity of resources as his father only received a meagre amount working as a guard in a factory. When Chime left Nigeria, he first migrated to Equatorial Guinea through the help of a family friend, where he stayed for 3 years; he eventually got a visa to travel to Spain in 1998.

Equatorial Guinea was a colony of Spain and at that time it was not as difficult, as it is today, to go to Spain from Equatorial Guinea. While in Spain, in the year 2001, during the Irish
economic boom, he made a visa application to Ireland after establishing contact with a company that promised to employ him, but his application was not successful.

In 2002, having failed in securing a work permit, he applied for a student visa which would allow him read a one-year course in an Institution in Dublin. This was equally hard as he had to pay the exact school fees for the course (about 12,000 Euros) and show a guarantee of accommodation so as to be granted a visa. He borrowed money from his friends so as to pay in full the student’s fees and was able to pay for accommodation for the first six months. All these were necessary for his visa application to be considered. After doing this, he was granted a study visa to do his chosen course in Ireland. He finally settled in Ireland for the one year course. As he said,

I came to Ireland because I wanted a better life. In Spain I did menial jobs like cleaning which only paid peanuts, I came to Ireland because I saw many immigrants moving from Spain and other parts of Europe into Ireland during the boom. As a third country national, it was not easy for me to find my way to Ireland even though I have already lived in Spain for a while. On arrival I started my course in Management and at the same time picked a job with a security company.

On completion of his course, he was able to secure a well-paid job in a computer company through which he eventually got a work permit. In 2005, he filed a paper for family reunification, for him to be united with his wife and two kids that he left in Nigeria. As he said,

[I]t was hard to bring my family to be reunited with me, immigration policies are hard on us immigrants, I had to wait for more than a year for this reunification to be possible considering the paper works and the delays involved.

Having said that, he confessed that he enjoys being in Ireland;

[A]s an immigrant from Nigeria, my salary at the end of the month takes care of my family needs, and at the same time, I am able to help other members in my family. While working in Ireland, I earn four times my monthly salary doing
similar work in my home country. This is one of the reasons why people from the Third World want to migrate, they want a better life and more rewarding jobs or business, and in my own case, my movement to Ireland is a success.

Though Chime sees himself as a successful migrant, he recounted three of his friends, **Douglas, Amaechi** and **Nsodo** who came to Ireland in the last few years, but recently left Ireland in search of greener pastures elsewhere. They left Ireland because they lost their immigration status having lost their jobs to which their immigration status was linked, in the wake of the economic crisis. They were all on work permits, which means, they would have to get other jobs to continue staying legally in Ireland. Their failure to get a job meant that their work permits could not be renewed. Rather than becoming 'illegal', they have long left Ireland in search of better opportunities elsewhere. Douglas went back to England, while Amaechi and Nsodo went to Canada and Australia respectively where they successfully got jobs.

Chime left the company he worked for in 2008 after getting his permanent residency and he became a taxi driver. For him,

> [B]orders are imposing a lot on third country nationals; you can work for three or four years paying tax and still end up being illegal in the country when you lose your job. It is the jobs that renew immigrants' permits, when you lose your job it becomes hard to get your work permit. This means that one has to leave the state if one loses his or her job.

For him, immigration rules in Ireland are too harsh on migrants, as he said,

> I always go through all sorts of scrutiny all the time when I am returning from travel, even though I have stayed for years living in Ireland. It is a sure sign that one is not welcome as an immigrant from a third country.

### 5.1.2 Eme

In the second case, **Eme**, a 37 year old man from Orlu in Imo State in the South East of Nigeria works with an institution of learning in Dublin. He came to Ireland in 2003 after
securing a job through a friend while he was in Nigeria, and this means that he came on a working visa. As a graduate of computer engineering he had a decent job in Nigeria, but he wanted something more. It was a friend who came for a conference in Dublin that made a contact for him and through this contact he was able to secure a job in an institution of learning, a position which he occupies till today.

Though the job offer was given to him, it was difficult for him to secure a visa to come to Ireland on the invitation of the employer. At the time of his first application in early 2003, he was kept on hold. His work permit was processed and he eventually was allowed into the country late in 2003.

He lives with his wife who joined him on family reunification in 2007 after their wedding in Nigeria. Because of the recent changes in Irish immigration and naturalization system concerning children of immigrants born in Ireland, they both opted to travel to America in 2009 where their child was delivered. Being born in America meant that their child became an American citizen, as it is one of the countries that still operate on (ius soli) citizenship by birth.


Many countries that formerly operated ‘pure’ ius soli in granting citizenship have moved to make some changes in their laws, only giving citizenship to children whose parents are citizens or are legally resident for some years. (Ireland still practice ius soli but with conditions). Presently a small number of countries practice ‘pure’ ius soli or citizenship by “right of soil.” In this system, children born in a country that practices ‘pure’ ius soli automatically acquires citizenship of the country where they are born. They are granted citizenship without conditions, and the citizenship and immigration status of the parents is inconsequential. Only 30 of the world’s 194 countries practice jus soli, United States and Canada are the only countries in the developed world that still practice ‘pure’ ius soli. Estimate has shown that up to 400,000 children are born annually to illegal immigrants in America and this is about 10 per cent of all children born in America. See Jon Feere, "Birthright Citizenship in the United States: A Global Comparison", accessed 8th April 2012, http://www.cis.org/birthright-citizenship.

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Though Eme has naturalized in Ireland, he said “the road to naturalization in Ireland is a long one.” In the past, people had to make applications and wait for years before their applications were answered, the recent changes introduced by the Government concerning the reduction of the ‘waiting period’ for applicants is a welcome relief for many immigrants.\textsuperscript{424}

In making applications for citizenship, applicants have to satisfy certain requirements.\textsuperscript{425} Failure in any of these means that one’s papers will be refused. Since the year 2010 when Eme applied, it was a long wait, but thanks to the recent changes introduced by the Government, he has his Irish passport today. Eme stated that prior to his naturalization his experiences taught him that “everything about immigration and borders is getting difficult and narrower in a bid to reduce the number of immigrants entering the country and those seeking naturalization.” However, he is quite thankful to the Irish nation as he successfully finished the process of naturalization, and has become an Irish citizen. Commenting on his experiences prior to naturalization, he says,

[I]t is a shame when someone has worked for many years in Ireland as evident in one’s travelling documents, paid taxes but will still be constantly asked unnecessary questions when crossing the border into Ireland, it is ridiculous.

\textsuperscript{424} Minister Alan Shatter showed his commitment to facilitate the processing of applications for citizenship so that the backlog will be dealt with by spring of 2012. Under the new measures which he has set up, decisions on applications for citizenship should be taken within six months. The Minister rightly saw it as “entirely inappropriate”, and “completely out of step with other countries”, that people who have lodged applications to become citizens were made to wait an average of 25 months for a decision on their application for citizenship. See, “Application wait times to be cut to 6 months by spring 2012” accessed 10\textsuperscript{th} April 2012, http://metroeireann.com/article/application-wait-times-to-be-cut,2791.

\textsuperscript{425} In Ireland there are requirements for the application of citizenship: applicants are to be of full age (18 years or older), they are to be of good character; they should have a period of one year’s continuous residency in Ireland immediately before the date of their application, also during the eight years prior to that, they should have had a total residence of four years in the state. Again, their intention in good faith of continuously residing in the state after naturalization has to be clear. As a procedure in assessing one’s citizenship application, there is always a thorough examination of one’s GNIB residency stamps to determine whether one is fully qualified. Applications from refugees are accepted with no cost, applications from minors and widows are charged €200.00 while applications from all others are charged €950.00, “Applying for Irish Citizenship by Naturalisation,” accessed 20\textsuperscript{th} January 2012, http://www.inis.gov.ie/en/INIS/Citizenship/Application/Form/guidance/note.pdf.
Having lived in Ireland for some years, he said he got tired of answering questions like;

[W]here are you coming from? Where are you going? What do you do in Ireland? Why are you here? What company do you work for? What is your profession? Can we contact the company you work for? How long are you here? These questions are uncalled for especially when someone evidently has lived in the country for some years.

These are common questions asked to a Third Country immigrant at the ports of entry in Europe, and immigrants have to grapple with these questions and answer them satisfactorily otherwise they will be delayed or refused entry. In this way, borders segregate against Third Country Nationals. With his years of experience as an immigrant in Ireland, Eme seriously questioned the distinctions that are made at the ports of entry where EU and Non EU citizens are separated, and the same time there are further distinctions made among Non-EUs,

[T]hose from non EU developed nations come to the same counters, and they are granted visas easily at the counters. In the same counters, many TCNs who already have been granted visas in their countries of origin and TCNs already living in the country are delayed and questioned more because of the passports they hold.

In Eme's opinion someone who has lived in the country for a long time, with a credible immigration history as shown in the passport, should not be questioned at the port of entry as if he or she is coming into the country for the first time.

5.1.3 Obi

Obi came to Ireland from Nigeria in 2007 on a student visa which he claimed was extremely hard to obtain. He attempted getting a visa in 2006, but failed because he could not convince
the Irish immigration authorities concerning his source of finance.\textsuperscript{426} Through the help of a relation, he was able to get a letter of sponsorship and a convincing bank statement that made his visa application successful. He was granted a visa in 2007, and he began a Master’s degree Programme in an Institute in Galway. In 2009, when he finished the programme, he asked for an extension with the immigration authorities so as to look for a job.\textsuperscript{427} He got a six months extension and in 2010 he successfully got a job in Galway as a business consultant. With his new job he got a work permit allowing him to work.

At the time of interview Obi was still single living in Ireland, though thinking of marrying and filing for family reunification. However, because of the way immigration policies are structured, Obi feared for the future, because the renewal of his work permit depended on whether he kept his job and the possibility of this seemed quite remote for Obi due to the economic downturn which was affecting his company. He was quite unsure if he would be able to reunite with his wife even after marriage, because he had gotten the hint that he might be made redundant by the company.

Having lived in Ireland for 5 years and working for a company that recruited him after his Master’s programme in Galway, he was not sure of getting any job if he lost this and at the

\textsuperscript{426} Full time non-EEA students are required to show that they have access to sufficient funds which they will use to support themselves during their period of study in Ireland. While they apply for visa, they must show a proof that fees have been paid to the college where they want to study, if the tuition fee is below €6,000, it must be paid in full in advance. Currently, non-EEA students seeking for students’ visa are required to demonstrate that they have access to €7,000 as part of their Visa application. Based on that, those studying for up to one year have to show that they would have instant access to €3,000 when they arrive at their first registration. Those studying for a period less than 6 months are required to have €500 per month of stay or €3,000 whichever is the lesser. See, “Notice Regarding Evidence of Finance for ALL Non-EEA Students from 1 April 2011,” Accessed January 18, 2012, http://www.inis.gov.ie/en/INIS/Pages/WPl1000003.

\textsuperscript{427} For one to be eligible for a one year permission to stay after studies in Ireland under the third level graduate scheme, a student is required to have studied in Ireland and completed a qualification at Level NFQ 8-10. The student must have an award “granted by a recognised Irish awarding body”. On the other hand, six month permission under the third level graduate scheme “is available to students who graduated a course at Level 7 of the NFQ.” See, “Student Pathway,” accessed January 18, 2012, http://www.inis.gov.ie/en/INIS/Pages/WPl1000076.
same time he was unwilling to go back to Nigeria to find a job, as it might prove to be a harder task.

Even though Obi had a work permit issued to him through the company that employed him, a migrant worker employed on a work permit must not work for any employer other than the one specified on the permit. Although since 1st June 2009, there have been some changes in the way work permits are issued and renewed, it is still proving difficult for employees to move to another employer.

In the case of Obi, since this was the first work permit issued to him, he would be expected to stay with the employer for 12 months and after that he would have the opportunity of changing to another employer provided his permit will still be valid. In Ireland, the employer or the employee can apply for a work permit, but there has to be a proof that the employer is unable to find an EEA or Swiss national available to take the job. When work permits are issued they are valid for two years and on expiration, can be renewed for another three years.

If Obi lost his job, he would have up to six months from the date of his redundancy to look for another employment. Since he already had a work permit, a ‘labour market needs test’ would not be necessary in any subsequent work application he makes, and he would have to apply for jobs that do not fall on the ‘ineligible job categories’. If Obi found himself outside this company and unable to get a job elsewhere in the country, it would mean that he would have to go back to Nigeria.


In the last few years, notably from 1 June 2009, there have been revisions on the way work permits are issued and renewed, work permits are no more granted for jobs with salary of under €30,000 a year except in an exceptional case. There are also more excluded categories of work that are not granted work permits. Labour market needs test has been changed to an 8 week advertisement with FAS/EURES and 6 days advertisement in national media. Also, spouses, civil partners and all dependants of new employment permit holders are no more excluded from labour markets needs test and fee. Accessed June 2, 2012, http://www.djei.ie/labour/workpermits/revisedworkpermitarrangements

Ibid.
Obi at the moment of this interview was seriously thinking of what to do to remain in Ireland, rather than going back to Nigeria, after paying taxes for almost four years. He had thought of registering in a school, but that would mean going back to a student visa, which has all sorts of restrictions, and would not allow him to file for family reunification. Moreover, moving back to student's visa would mean that he would not be able to apply for long stay and naturalization which he hoped to do after five years of legal residency in Ireland. As he said,

I have practically run out of options due to the way Irish immigration policy is structured. I am only waiting and praying for some miracles to happen between now and May 2012 when my work permit expires.

5.2 Women living in Ireland as immigrants with their children: Amara, Phili and Ifii

Migration for Ibo women and as such African women has often depended on their male counterparts, but in the last few decades, patterns of migration have been constantly shifting. Most women in the past migrated on the ground of family reunification to join their spouses. Today, there is a new trend of women migrating and moving to destinations of their choice thereby becoming primary migrants in their own right. In this way, rather than just being dependents of men, women aim to improve their lives and also the lives of their children and family members back home.

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431 International migration was predominantly a male phenomenon especially during the 60s and 70s labour movements, women and children got involved in the secondary wave of family reunification in the 1980s and 1990s. Things appear to have changed from the 1990s; women began migrating in far higher numbers than before. Women began migrating both as family members and independently. In the developing worlds like Asia and Africa, more women have become primary wage earners. “Gender, Poverty Reduction and Migration” by Irena Omelaniuk, accessed January 20, 2012, http://siteresources.worldbank.org/EXTABOUTUS/Resources/Gender.pdf. Also, Susan Forbes Martin in “Women and Migration” points out that “one of the most significant trends in migration has been the entry of women into migration streams that had heretofore been primarily male”, see, “Women and Migration,” accessed January 23, 2012, http://www.un.org/womenwatch/daw/meetings/consult/CM-Dec03-WP1.pdf.
It is observable that the barriers created by borders in Europe, and the developed world, have become extremely challenging to women who opt to migrate on their own. The global border regime has made women immigrants more vulnerable and susceptible to exploitation.\(^{432}\) The strict immigration system in Ireland and Europe creates a scenario where women, who do not want to be dependants, are often exposed to dangerous situations in order to gain immigration status.

### 5.2.1 Amara

**Amara**, a middle aged woman in her 40s from the South East of Nigeria seemed content with her status at the moment as an Irish resident, but a lot of things have happened in her life over the last few years as she sought residency in different European states. In the last 12 years, Amara travelled to three different countries looking for a better life as she had no one to sponsor her to get the University degree she aimed for. She twice applied for a visa to go to the UK but never succeeded. She was not granted a visa as she could not provide evidence of enough income in the statements of account she presented.

When she failed to secure a visa to the UK, a friend living in Italy convinced an Italian colleague to help bring Amara over to Italy on the ground that she would be a house help and care for the aged parents who live alone in the house. On this private arrangement, which involved an EU citizen who issued her with an invitation letter, Amara secured a visa and she travelled to Italy in the year 2000. Since it was a private arrangement between her and the family that invited her into the country, she only received little at the end of the month for her

\(^{432}\) "During transit and at their destination women can be faced with verbal, physical and sexual abuse, poor housing and encampments, sex-segregated labour markets, low wages, long working hours, insecure contracts and precarious legal status." See, "Gender and Migration" by Susie Jolly and Hazel Reeves, accessed January 26, 2012, http://www.bridge.ids.ac.uk/reports/CEP-Mig-OR.pdf.
As she could not get any such job, she still dreamt of going to England, which was her initial aspiration. On the invitation of her friend who was working in the UK, she succeeded in getting a one year visiting visa to the UK in 2002, where she stayed until 2003. During this time many migrants were moving from the UK to Ireland because of the economic boom propelled by the Celtic Tiger, she joined the bandwagon and arrived in Ireland though she came on a visiting visa as a UK resident.

Soon after arrival in Ireland she met an immigrant man who was legally resident and employed. They got married and she was able to secure a “dependent visa,” which allowed her to settle in Ireland. When she arrived in Ireland in 2003 Irish born children of immigrants were given citizenship, it is only since January 1st 2005 that the Irish-born children of migrants are no longer automatically Irish citizens.\footnote{Migrant Integration Policy Index, published by British Council and Migration Policy Group, (September 2007), 96.} From this date, citizenship of children born in Ireland to migrants depends on the residence status of their parents, who must have lived legally in Ireland for a minimum of three of the four years preceding their birth.\footnote{Ibid.}

As Amara put it,

[M]any women from poor African countries enjoyed the privilege of giving birth in Ireland, and having Irish born children, this was an open way of people gaining citizenship. I equally benefited from it because my first son born in 2004 is Irish.

By mid-2006, they had another baby who is a girl but was not given Irish nationality because of the changes in 2005. Her friends Chinenye and Ngozi confirmed that the changes in 2005 affected their children born in 2006 as they were not given citizenship. As Amara said,
Through my husband, I was able to get immigration status as “a dependent” until eventually I got a job. I am separated from my husband since 2007 as he decided to move on out of Ireland. I live with my two kids who are separated by immigration rules. Though all of them were born in Ireland by the same parents one is Irish, and the other is Nigerian, immigration rules create borders even among brothers and sisters.

Amara believes “immigration policies keep changing because borders and the road to citizenship are ever more increasingly being tightened more and more making people to think of other avenues of seeking membership.” Though her life is somehow stabilized at the moment, as she sells African foodstuffs in Dublin, she questioned the borders that have always surrounded her throughout these years. As she said,

Immigration laws are too tough on us and our children. There is already a class created by immigration rules in my family, my boy who is Irish realizes that he is better placed and has more rights than my daughter who is Nigerian. This summarizes the whole issue.

5.2.2 Phili

For Phili, a 36 year old sales woman, it has been difficult to settle down in Ireland. Having stayed for four years in Ireland after arriving in late 2008, she thinks her life is better than it used to be. For her, the biggest problem for immigrants in Ireland is the immigration rules and controls that serve as instruments for controlling Third Country Nationals like her. “It is not just immigration control, anywhere you go there is always the tendency to treat you differently because Irish citizens seem not to have accepted immigration of third country nationals as a reality.”

Phili recounted how hard it was for her to scale through the immigration hurdles and be legally resident in Ireland today;
As a woman, I want to be independent, through a family friend who lived in Denmark I travelled to Denmark from Nigeria in 2004 where I did my graduate course. I came to Ireland in 2008 after my graduate studies in Copenhagen; I did a two year Masters programme in Dublin Institute of Technology after which I decided to look for a job. Failure to get a job would mean that I had to leave the state after six months, as a woman this was very tough. I was tempted to do all sorts of things so as to gain an immigration status and get my papers sorted. I was very eager to meet someone for marriage, especially someone who is an EU citizen or someone who is a resident. In this situation, a woman becomes vulnerable.

As she was nearing the end to her course in Dublin, it became obvious to her that she might be heading back home as she did not see any possibility of getting a job. While studying there were a few jobs she got the opportunity to do, but none of the jobs she got was permanent, some lasted for 3 months and some others for weeks. These sorts of jobs are not guaranteed and were not able to give her an immigration status if she were to finish her studies. Phili was so worried about her predicament that she was desperate for something to happen quickly in her life,

[I]t was during these searching periods that I began to try everything, I even started going to Church more often. It was in Church that I met this fellow who wanted to know more about my past as he was Polish and appeared very religious. We began to see each other and eventually he started asking me out. Finally, he proposed to me and I was delighted, we travelled to Poland for the marriage; my marriage to him ended all my immigration fears. Today we have a baby boy. If not for this marriage, I wonder what would have happened to me considering my immigration status.

The reversal of the Government’s “former position on recognising the EU Treaty Rights of non-EU citizens married to EU citizens” equally favoured Phili. In the past, the position of the Irish Government was that residence permits were denied to non-EU citizens’ spouses if the couple had not lived together in another European Member State prior to their entry into

It was only in July 2008 that The European Court of Justice clarified that Ireland’s implementation of the EU Free Movement Directive had been incorrect.

The Government since then has changed its position by recognizing the marriage of EU spouses with non EUs, even if they had not lived in another EU country. Phili is legally married to an EU spouse and is legally resident in Ireland with her family. Today, a good number of women and men who are TCNs are married to EU citizens; it is one of the surest ways to be legally resident or gain citizenship.

5.2.3 Ifii

Phili’s story is similar to that of Ifii who is married to an Irish man. Ifii met her husband while doing social work among a religious group in the Catholic Church. Before her marriage, Ifii had wanted to go back to Nigeria when it became impossible to renew her visa. She did a three year course in Dublin, but eventually ran out of resources in her third year, because her sponsor from England was not able to meet the financial demands of her studies anymore.

She was helped by a man she met in a religious group she worked with, and eventually got married to him when she finished school. In her third year, it became practically impossible for her to renew her Garda card which was renewed yearly, because she could not clear her school fees. In Ireland fees must be cleared before students are given letters from school to renew their Garda immigration cards. Without clearing the fees for the year, schools do not give letters to students to go for visa renewals, and without these letters issued by the schools students’ visas are not renewed by the Garda Immigration Bureau. As she put it;

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436 Ibid.
437 International students in Ireland pay higher fees compared to EU counterparts. For example in the TCD Postgraduate Fee Schedule for 2011/12 an EU student pays 7,250 in a year to study M.Sc. in Applied Psychology while a non EU student doing the same course is expected to pay 16,000 Euros.
I met Sean, and he ended my frustrations. He saved me in my third year by sponsoring me to finish my course, he provided for me everything I needed and at the end of my course Sean proposed to me, and we got married. This is the best possible thing that could happen to me, because, I was always living in fear thinking of what is going to happen next. I must confess that even though I have settled in Ireland, married to an Irish, today I still have immigration phobia because of the unpleasant experiences I had whenever I was to renew my visa. It was unpleasant because I was always harshly sent away, due to my inability to provide all requirements needed for visa renewals.

Ifii and the others highlighted in this section were quite lucky to have found a way out of their immigration woes. Many women become vulnerable because of their immigration status as some opt for anything possible in order to gain a legal status. Some go underground and live undocumented while some have ended up seeking asylum. It has to be said that in these types of situations women go through a lot as they sometimes can become objects of abuse. Two women Josi and Nkechi have been in search of a solution to their immigration problems, though they were reluctant to talk about the progress they have made. It was visible that they showed much resentment on the topic of borders and immigration.

5.3. Living in Ireland as refugees: Paul and Vin

Paul lives in Longford, while Vin lives in Dublin. They count themselves lucky to have been accepted as refugees living in Ireland after the long wait as asylum seekers.

The same applies to other Universities and Institutes where there huge gaps between EU fees and Non EU fees. In Dublin City University, Undergraduate Degree Fees 2011/2012 shows that for Students studying BSc in Nursing (General), EU students annually are expected to pay 7,144 Euros while Non EU students pay 13,200.
Paul claims to have been born in Aguleri Anambra State in South Eastern Nigeria. The Igbo people are aware of the protracted conflict between Aguleri and Umuleri, two communities that are supposedly related. It is a conflict which in the last decade has claimed several lives, two communities that seem to be eternally drawn at war with each other. As Paul said, “I lost my two brothers and a sister and I was at the brink of losing my life, I was terrified because I was warned that anywhere I went to in Nigeria I would be found out and dealt with.” Paul claims that he left Nigeria as he was not guaranteed security in any part of the country. He first of all left for England on six months visiting visa which he only secured after the third trial.

At the expiration of his visa in 2004, he simply crossed over to Ireland through the North and arrived in the Republic. Though Paul’s story indicates that he stands persecuted in his homeland, he accepts the fact that some asylum seekers embellish their stories to make them more acceptable because of the toughness of immigration and border guards. In his words,

"You have to prove yourself and convince the authorities of the state that you are vulnerable so as to consider you as a victim of persecution. One may qualify to be a refugee, but at the same time, one may be unable to convince the authorities. On the other hand, someone may not qualify or may be an economic migrant, but is still able to convince the authorities with his or her own stories."

Paul is convinced that a lot of people in the society see refugees as a burden in Ireland because of negative reporting by the media, and this has a psychological effect on refugees and asylum seekers themselves. For Paul,

"Refugees and asylum seekers face many problems in Ireland; we are always threatened with deportation. We are treated like people who are not wanted, as
people who have come to steal Irish money and this creates room for some miscreants to rent verbal abuses on us.

He was an asylum seeker for three years before his application was approved. For him, one certain thing is that life as a refugee or an asylum seeker is like inhabiting a space of non-existence. It is a life of fear and constant surveillance; yes one may have freedom, but the stigma of being a refugee follows one.

For him, “refugees live a life of total dependence on the authorities, even though as a refugee you are given the opportunity to work, you are still at the mercy of the state who can decide to send you back to your country.” In Ireland, the immigration stamp given to refugees is “Stamp 4”. This enables them to look for a job like any other legally resident person in Ireland. Paul is a driver for a company in Longford, and he hopes to be naturalized in Ireland as he does not think of returning home to face the conflicts he already has managed to escape.

5.3.2 Vin

In the second case, Vin recounted how he spent years in what could be termed as a ‘legal limbo’ while waiting to know his fate. He came into the country purposely to seek asylum in 2001 through the North of Ireland. He registered as an asylum seeker after entering into the country and had to endure the long wait to know his fate. For him,

[O]ne clear thing is that in this period of waiting you receive little information about the state of your asylum application. One can stay for so many years

438 In Ireland, refugees are given Stamp 4; this stamp permits people to remain in Ireland “until a specified date”. Other people who are given stamp 4 are Programme refugees, those who are Non-EEA but allowed to be reunited with their family under the Refugee Act 1996, Those who are Non-EEA but are family members of EEA citizen, A spouse of Irish citizen, A parent of Irish citizen child who has been granted the permission to remain in Ireland, A family member of EU citizen who qualifies under the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I 656 of 2006) See, “Main Immigration Stamps,” accessed March 14 2012, http://www.inis.gov.ie/en/INIS/Pages/Stamps.
waiting for a decision to be taken on the lodged application, in this situation you are just in the middle of nowhere. You are just at the mercy of the state as your asylum petition can be denied.

Vin spent five years in search of refugee status, “I was elated when I finally got it in 2006 having spent all these years in mental trauma.” Asylum seekers get extensions and these extensions can be given several times before one’s petition is finally treated. Vin had several extensions, during these years he was left with no other option than just to wait and hope. This is so because asylum seekers over the age of 14 are always finger-printed; the finger print goes into the electronic records system which is equally connected to the EURODAC database for all asylum seekers coming into Europe. As Vin pointed out, “the implication is that you cannot take any other alternative without being found out in the system,” this highlights one of the mechanisms for policing the ‘European fortress’. This mechanism is elaborated in the Dublin Convention as a measure to reduce asylum claimants from moving from one country to the other.

There is always the uncertainty created by the long wait for a decision on an asylum application and the same can be said of those who apply for “leave to remain”. As he said,

[P]eople are shifted from one camp to the other, and in these camps, you find all sorts of people. In the camps, people’s valuables can be stolen at any time bearing

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439 The EURODAC system was set up to facilitate the identification of asylum seekers or immigrants who illegally cross EU borders. Through the EURODAC system people’s fingerprints are compared so that countries can determine whether any asylum seeker or illegal migrant found in any EU country has in the past made any claim or has been in another EU country. EURODAC has a Central Unit with computerised central database so as to compare people’s fingerprints so that the result is transmitted between EU nations and the database. See, “Eurodac System”, accessed December 16 2011, http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133081_en.htm.

440 When asylum petitions are refused, and when applicants fail in having the decisions on their applications overturned by the Refugee Appeals Tribunal, they can still apply for ‘leave to remain’ in the state which sometimes can be granted by the discretion of the MOJ usually on humanitarian grounds. Asylum applicants who enter into civil partnership with Irish or EU citizens can withdraw their application and apply for leave to remain on the basis of this partnership.
in mind that people in these camps have undergone all sorts of problems, and do appear to have questionable characters.

As Vin put it; “these periods of waiting for decisions were the most unsettling periods in my life, as many call it, it is a period of ‘limbo’, it is a period when you are tempted to do anything so as not to be deported in the end”. What characterizes this period of ‘limbo’ is the fear of the unknown, one’s application can be accepted or rejected and rejection is something asylum seekers dread.

Vin reveals that, in the years while he was waiting for his decision the day to day uncertainty and fear that he lived with was an excruciating experience. For him, “it is a period when you live in fear; not knowing what would happen next as you easily could be given a deportation order at any time.” Vin recounted that, during those years of wait, he could remember the experiences of some inmates like Shola and Amos from Nigeria, and Stephen from Kenya. The uncertainty they experienced probably led to their serious breakdown in mental health.

Being an asylum seeker is not something one should wish for. Vin elaborated,

[P]eople seeking to be refugees do so because of poverty and problems in their homeland. These people at a stage started behaving abnormally as their mental states degenerated at different times, and they had to be hospitalized; this is all because of the chronic uncertainties in their lives. The little pocket money handed to us was nothing one could depend on, I lived on hand-outs from other people I knew until I was granted permission to be a refugee. As a refugee, it was difficult to find something to do; refugees are asked unnecessary questions concerning their immigration history when they go to search for what to do.

It is not just the external border controls that migrants have to face. There are various means of internal border control, aimed at scrutinizing the immigration status of foreigners, like checking identity cards, Garda cards and visa pages in one’s passport. Refugees suffer a lot from this mechanism as they pass through the limbo state of asylum-seeking into the refugee
status of uncertainty. In Ireland, when one is searching for employment, immigration records are crucial for one to find any job whether permanent or temporary. As he pointed out, “I was embarrassed several times when I introduced myself as a refugee, it was like I was not believed as some looked at me as being too well dressed to be a refugee”.

He pointed out that,

[N]o matter what happens, refugees will still arrive in Ireland, because, there will be wars and conflicts as there have been in human history. Not just that, there will always be the likelihood that economic migrants would seek asylum as a way out of their misery whether they will be considered refugees or not, people will still find other ways of beating the tight border control.

Vin believed that when peoples’ chances to come into Ireland and settle in a legal way become slimmer and slimmer many will more likely risk seeking asylum even though it has become exceedingly hard to get into the system. As he recalled,

I passed through the asylum system, and I know there are people in the asylum process who are not strictly fleeing from political persecution. Rather, some of them see the asylum process as an escape from the current system of tight border control. They know they do not stand the chance of getting working visas that will allow them settle here. People can properly deceive immigration officers by only securing visiting visas and then end up as asylum seekers when the visa expires. In the first place, if they apply for visas that will enable them stay longer they will be refused, secondly if they come in with tourist visa and go for renewal or extension it will be hard to be granted. Many come in through this means and end up being asylum seekers.

As he continued,

In a bid to clamp down on bogus asylum seekers, there is a very high chance that people in desperate need of protection are being rejected in Ireland. It is also a fact that officers clamping down on undocumented immigrants often deny the reality of human stories so that they can meet their targets in terms of detaining and deporting people.
This he says does not help, rather it makes those seeking asylum and undocumented migrants become more inventive. Finally, the media have not been helping matters in terms of the images they present to the public concerning refugees and asylum seekers, which have been overwhelmingly negative on the issue of asylum seekers arriving in Ireland.

Many like Paul and Vin (for example Sam and Nonso) who were once asylum seekers are today living in Ireland as refugees. Their stories are quite similar. Although, they have been granted permission to stay and given Stamp 4 to live and work in Ireland, they believe that they still face lots of difficulties as refugees and asylum seekers are seen in the same light, in the public view. As Vin pointed out; “sometimes people see asylum seekers and refugees as the cause of the economic woes, someone has even boldly told me to go home because the money is finished even though I have been granted permission to live and work in Ireland.”

Paul, Vin, Sam and Nonso are quite grateful to have been granted permission to live and stay in Ireland, but the road they have walked to merit this permission is unforgettable. They seem to have spent a significant chunk of their lifetime seeking for membership in Ireland and the EU, a membership they supposedly hope will make their lives better than what it was in their home country, and also different from what it was while they waited in limbo as asylum seekers.

5.4. Undocumented migrants and asylum seekers: Uchenna, Chiaka and Nwanna

5.4.1 Uchenna: a failed asylum seeker

Uchenna, a 33 year old male from the South East of Nigeria, came to Ireland in 2009, entering Ireland through the UK like many do. Irregular migrants enter into Ireland through the UK via the Northern Ireland as the UK and the Irish Republic have a Common Travel
Uchenna sought asylum on the ground that he was a victim of persecution in his homeland. Though he claimed he was persecuted in his homeland, he was not able to prove convincingly to the authorities that he was being persecuted in his local community, in Lokpanta, Abia state, Nigeria. Whatever was the truth in his case, he was deemed not to be a 'genuine' asylum seeker and his application was not granted which led him to apply for ‘leave to remain’. At the time of this interview in mid-December 2011, he claimed he faced possible deportation as his case had failed.

As he put it,

[T]he only option I have is to go back home, I know that people can disappear and live underground, but it will be too hard for me. Living clandestinely and undocumented in Ireland is hard and risky, it is like one going into non-existence with no identity and cut off from your families. It will make me keep changing positions or hideouts as people do. This is crazy, because Ireland is a small country; one can easily be apprehended by the authorities and still be deported.

Uchenna was convinced that his application failed because there is always eagerness on the part of the authorities to find discrepancies in the claimant’s account. In this eagerness, they make an effort to discredit the authenticity of the grounds of one’s claims. In his own case, he claimed that instead of looking directly at his case of persecution, the authorities picked on how he came into Ireland thereby downplaying the fact that he stands persecuted in his own country. Uchenna’s case resonates with Shahram Khosravi’s claim that those who make

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441 Ireland and the UK have a common travel area as they have some level of co-operation on immigration issues. Based on this agreement, there are no passport controls in operation for Irish and UK citizens travelling in and out of the two countries. Third country nationals on the other hand can be refused entry into Ireland or UK if the traveller intends to go into any of the countries without visa. Immigration officers in Ireland do have the power to check those arriving into Ireland from the UK and do have the power to refuse them entry if they do not qualify. Those who travel by air or by sea into Ireland have to routinely pass through the immigration port of control but those who travel by road through the North of Ireland are sometimes checked randomly and selectively.
decisions for people seeking asylum often tend to concentrate on the inconsistencies in their travelling documents rather than focusing on why they are fleeing.442

Uchenna believes that the media do not help matters as they often tend to negative reporting concerning asylum seekers. He thinks that due to the misrepresentations in their reporting, the public perception is that asylum seekers are ‘bogus’ refugees coming to the developed world only to scrounge benefits. In this way, he said;

[W]e are often seen as a ‘problem’ rather than people who have problems in their homelands. We are not people who need protection or help; rather we are people who should be confined to ‘secluded camps’ awaiting to be sent back to our homelands because of the risk we pose to the society.

As he said, “because of the negative perception, it becomes hard for migrants to establish what could be deemed as ‘genuine claims’, because authorities work hard to find loopholes in claimants’ cases.” In Ireland as well as in many other EU countries, asylum seekers are prevented from seeking any employment, therefore, they are forced to depend only on benefits they receive.443 This means that they cannot contribute to the state through tax payment, as a result of that they are not entitled to any claim. Their application can be rejected by the state, and when rejected, they face deportation, like in the case of Uchenna.

At the time of this interview, Uchenna claimed he was in the detention camp. To attend this interview he had to get permission to attend to something important in the city, which was

442Khosravi, ‘Illegal’ Traveller, 111-112.
443Those seeking asylum are by law not entitled to be engaged in employment, an asylum seeker that illegally works faces a fine of €634.87 and/or one month in jail. Those in Direct Provision accommodation receive a benefit of €19.10 per week (€9.60 per child) which is their Direct Provision Allowance. When an asylum seeker opts out of this arrangement by moving out to stay on his or her own, he or she can apply for the reduced Supplementary Welfare Allowance of €19.10 (€9.60 per child). See, “Asylum Policy Provision,” accessed January 15, 2012, http://www.inis.gov.ie/en/INIS/Pages/Asylum/Policy/Division. See also, “Direct Provision,” accessed January 15, 2012, http://www.ria.gov.ie/en/RIA/Pages/Direct_Provision_FAQs.
fixed through someone who knew him. Detention for asylum seekers is often a common thing, so that when their applications fail they are easily deported. In these centres, many things happen as some attempt suicide or do desperate things to avoid deportation.

Uchenna recounted how one of the detainees confided in him that he was planning to take an overdose of drugs rather than being forcibly removed from the state. The overdose did not kill him and he was eventually removed forcibly in 2009. A prominent way to escape deportation for failed asylum seekers is to first of all escape from detention and live clandestinely as some do, but as Uchenna said; “This is very risky in Ireland; I will prefer to go home.”

Though he did not know if and when he would be deported, he feared the probability that he will be forcibly removed from the state at some point. In addition to that, he did not know what would become of him on his arrival in Nigeria. Deportation is something that brings more problems on arrival in many African countries, because authorities feel that these deportees often tarnish the image of their countries in foreign lands by presenting a negative image of their homeland. Deported asylum seekers are handed over to security officers, who often make the life of these returnees unbearable, depending on the reasons why one sought asylum. As Uchenna had been informed by his friends,

[People can be tortured or mishandled; I did not want to be returned back to Nigeria because I have spent a lot of money trying to travel to Ireland. At the moment, I do not want to consider any other option, rather than hopelessly being illegal, I will go anytime I am picked for removal.

Waiting for deportation is a life of uncertainty; it can be so soon or it can be an indefinite wait. The Irish Examiner recently reported the case of a man who spent eleven years waiting for response to his asylum application; and of those eleven years, he waited for deportation
for three years.\textsuperscript{444} The UNHCR reports show that the average waiting years for deportation in Ireland is four or five years.\textsuperscript{445} While Uchenna waited for his removal, he still thought that some miracle might happen along the way that could allow him to stay in the country.

Deportation is something that happens regularly from Ireland. The \textit{Irish Times} reported that, on the 13\textsuperscript{th} of July 2011 a chartered flight, that was organised by the EU border agency FRONTEX in coalition with the Garda National Bureau of Immigration left Dublin airport at 8.30pm for Lagos Nigeria. Unfortunately, the flight was forced to return to Dublin, because the Algerian authorities refused to allow this flight to use its airspace. On this flight were 26 deportees all from Ireland, including 14 Nigerians (8 adults and 6 children) and 12 Congolese (all adults). Their deportation was eventually rescheduled for a different time.\textsuperscript{446}

5.4.2 Chiaka: An undocumented immigrant

In another case, Chiaka, a 37 year old male from Abiriba Abia State in South Eastern Nigeria, came to Ireland in 2007 to work for a manufacturing company in Limerick. The company that brought Chiaka to Ireland secured for him a work permit but the company has since folded. This meant that Chiaka was unable to renew his permit as he could not find any other job; therefore, he became undocumented. He looked forward to getting another job that would aid him to renew his permit but jobs were not forthcoming.

Since the loss of his job he confirmed that like other undocumented migrants he has been living from hand to mouth, sometimes receiving hand-outs from groups working with immigrants and refugees. In his situation as an undocumented migrant, he could not be


\textsuperscript{445} Ibid


176
legally hired by any employer and no employer seemed to be ready to process any permit for him in these hard times. As he said,

[O]ne might even be lucky to get odd jobs where one can be given very little, ranging from three Euros per hour or five Euros. Such odd jobs like packing goods only come once in a while; this is the situation as one has no other alternative. I cannot get a good job; I lost my job two years ago and cannot renew my work permit, am just helpless am only thinking of how to return home.

He claimed he tried his best to get permission to remain and be documented, but it had not worked. Therefore, he was going to take the last option which was to go back in search of a job in Nigeria. Chiaka’s story is one among many in Ireland. There are quite a considerable number of undocumented migrants in Ireland. On Saturday the 17th of December 2011, the eve of ‘International Migrants’ Day’, about 200 undocumented migrants and their families and supporters held a candle-lit march from Grafton Street to the Dáil. Estimates suggest that there are about 30,000 undocumented migrants from different parts of the globe in Ireland. During the march, these immigrants and their supporters, called on the Irish Government to introduce an ‘Earned Regularisation Scheme’. Such a scheme would give undocumented persons in Ireland the hope and opportunity to legalise their immigration status.

Like Chiaka, there are many TCNs who seem to be enmeshed in the immigration net, not knowing what to do next. They only hope that someday the government will help put them out of their immigration misery, by regularizing their stay on the basis of the fact that they have spent some years in Ireland.

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448 Ibid.
5.4. 3 Nwanna: Seeking asylum in Ireland

Nwanna is a 19 year old male asylum seeker. His fellow asylum seekers call him by different nicknames because of his boisterous character and he seem to be ever ready to answer any name they call him. Nwanna is a lively young man who always has an opinion about things and he is quite confident in talking about whatever he thinks. He always hangs out with people who look older than him, although, he is still remarkably young. He came to Ireland in 2008 with a visiting visa but quickly became an asylum seeker, though he was under age at that time and unaccompanied.

According to Nwanna, his parents lived in the Northern part of Nigeria (Bauchi) though originally they are natives of Orlu in the South East of Nigeria. He attended primary school but did not complete his secondary education due to poverty in the family. He eventually ended up in a shop doing business, as many young Igbo boys do when they drop out of school.

He recounted how in 2008, he got in contact with a customer, who always visited their shop in Bauchi to buy from their bookshop. This fellow one day told him that the local government will be sending some individuals to Dublin for a two weeks conference on rural development. Though the conference was for local government officials, the fellow told him that if he could raise some cash, his name could be added to the list of people that would go on the trip so that he could find his own way on arrival. As he says,

I told my elder brother about it, and he agreed to raise some cash for me so that I try my luck. He raised about 2,500 Euros (about 500,000 Nigerian Naira), and we gave to the man, and he put my name as it was supposed to be a local government sponsored trip. He only manipulated a few things and inserted my name as one of those attending the conference.
This is how Nwanna came to Ireland and he ended up being an asylum seeker on the expiration of his visa. He had a two weeks visa to be in Ireland for this conference which was genuinely attended by the others. At the expiration of his visa, he went immediately to seek asylum. His claim was that he was suffering persecution as a victim of gay abuse; according to him “I did everything to make sure that I was believed.”

In the whole process, it was discovered that he was under age as he had not reached 18 years. He opened up to reveal his real age, and how the middle man who organised his journey had falsified his travelling documents so as to be above 18, therefore, eligible to travel on his own. As shown in the last chapter, middle men who facilitate ‘bogus journeys’ similar to this of Nwanna have their connections and are ever ready to do anything to secure visas. All they are interested is to make money, it does not matter to them what migrants may go through in the journeys.

Eventually Nwanna was placed in foster care in Dublin, he stayed with a family, and he was so candid that the family was exceptionally sympathetic to him. As he was under aged, he was given the opportunity to go to school, and he was still in school at the time of this interview. Though he started afresh without beginning from the class he dropped from in Nigeria, he was quite happy that he would be completing his secondary education in the next year. He was only removed from foster care in 2010 when he supposedly turned 18 and since then has been living in the asylum hostel.

As an asylum seeker, Nwanna is not entitled to work in Ireland.\footnote{Martin Ruhs, \textit{Managing the immigration and Employment of Non-EUs nationals in Ireland}, (Dublin: The Policy institute Publication, Trinity College Dublin 2, 2005), 19.} If he attempts to work and is caught, he will pay a fine of €634.87 and/or one month in jail.\footnote{Ibid.} He is only going to school because he came as under aged, adult asylum seekers are not entitled to register with FÁS or
to go on FÁS courses. They can only attend English language classes and part-time courses provided by volunteer groups or classes organized by ‘VEC colleges’.\footnote{These are schools established by \textit{Vocational Education Committees} (VECs) in Ireland; they provide educational opportunities for younger people, particularly early school-leavers. There are about 33 VEC schools in the country and they can now organise second-level, adult, community and second-chance education, Post Leaving Cert (PLC) programmes, prisoner education, traveller education and training programmes funded by the EU.}

As an asylum seeker, Nwanna received ‘Direct Provision Accommodation’ and €19.10 per week (€9.60 for children), which is their Direct Provision Allowance. An asylum seeker who prefers to move out of Direct Provision is often offered the chance to apply to the local Community Welfare Officer so as to be given reduced Supplementary Welfare Allowance of €19.10 (€9.60 for children).

From Nwanna’s account, asylum seekers do not receive child benefits and when they make their applications they are placed in full board hostel centres. In the centres, their three meals a day and their accommodation are guaranteed, and they are required to stay in these hostels until decisions are made on their applications. In order to leave the state permission must be granted by the Minister for Justice. In a case of failure to comply with this directive, an asylum seeker who leaves or attempts to leave the state without permission from the Justice Minister must pay a fine of €634.87 and/or one month in jail.

For Nwanna;

[B]eing an asylum seeker is a horrible life, you are transferred from one hostel to another, it is as if life is purposefully made tough for you so that you rethink and opt for return. Since life is made hard, asylum seekers learn to survive in every way, anything you own can be stolen at any moment by fellow inmates as people only receive a meagre amount weekly, I have lost watches and pairs of trousers. I enjoyed when I was living in foster care, now it is a sickening life though I have no option.
Despite these experiences, Nwanna felt lucky and thankful that he had been given the opportunity to go back to school and learn. As he said,

I felt so good when I lived in foster care, living in the hostel is a different ball game. I have several times witnessed people being rounded up as early as 4.00 am for deportation. This is a very bad experience, and I just hope and pray that this does not happen to me one day.

Nwanna knew that his fate hung in the balance. After finishing his school he did not see any chance of being granted asylum, and he seemed to be thinking ahead of what to do. He had already involved himself with another Nigerian girl (who is legally resident and is waiting to receive her citizenship), and she has had a baby with him. He felt that with the child and a “de facto relationship” he would be allowed to remain in Ireland.

As a Non EEA national in a de facto relationship with an Irish National for a minimum of two years, Nwanna can make application to the General Immigration Office to rectify his legal status in Ireland. He then has to provide evidence of a durable relationship with his partner of at least two years. On the other hand, non EEA citizens in de facto relationships with EU citizens who wish to apply for their legal status to be rectified must show evidence of this relationship for at least four years.453

This is what the law provides and Nwanna hoped that to some extent this would turn to his favour in due time. He seemed to be strongly convinced that whatever happens, he would be successful in using his relationship with his girlfriend to gain a legal status in the country. One thing for sure is that people in a desperate situation, like Nwanna, are ready to try anything to avoid being forcibly removed, in the case that their application is refused.

5.5. Ike: Undocumented migration and marriage of convenience

Ike was originally born in Afikpo Abia state in the South East of Nigeria and has been in Ireland in the last five years; he first moved from Nigeria in 2004 and went to Greece where he got married to a Greek citizen. They legally came into Ireland in late 2005, but their marriage barely lasted for two years before they parted ways, and he decided to stay in Ireland as they had no child in the marriage. Since he was out of marriage, it meant that his immigration status was threatened, because he needed to be legally married to someone who is an EU citizen so as to renew his papers.

He knew that, at the expiration of his visa, he did not stand the chance of getting it renewed based on his marriage, since their marriage no longer existed. He eventually became desperate for another relationship with an EU citizen as it was the easiest way to sort his immigration status out. Like Ike, migrants in search of immigration status often become desperate to have relationships with EU citizens or those already naturalized. They perceive this as the most possible way for immigrants who do not have meaningful jobs to regularize their stay in Europe. As he said,

I could only get jobs that I did for one week or two weeks. I never got any meaningful job. In my desperation I luckily got involved with an Irish lady whom I eventually married, though she is a ‘junkie’, we stuck together as I saw it as the only chance to regularize my stay.

Like Ike, many Africans and other TCNs are married to Irish or EU citizens, and from my observation many of these marriages do seem to be working out for the moment. Among many that I have seen during the course of this research work, Afunanya who is a native of Uzii in the South east of Nigeria confirmed that he got married to an Irish girl back in 2007, and both are living together happily in Sligo with their children. Equally, Obino from Owerri in the South East of Nigeria got married more than eight years ago to an Irish woman and
both have children and live happily in Dublin presently having lived in Athlone for some years.

Obino ard Afunanya like many who have gone through a similar process have all naturalized and become Irish citizens. In contrast, Ike’s relationship did not seem to be working well, because there were so many irreconcilable issues due to his wife’s addiction to drugs. Having said that, Ike claimed they were just hanging on, because, his relationship with the woman had given him a better immigration status.

He is one among many immigrants in Ireland and Europe searching for opportunities to become EU members through marriage. As he said, “I was desperate, I did not have any alternative to renew my papers, and I just have to hang on to her because I want to get citizenship, though I am ready to live with her if she stops her addiction.” Although, getting citizenship in Ireland is not automatic as there are rules depending on when one is married to the Irish person.

All those married to Irish citizens on or before 29th November 2002, were until 29th November 2005, able to lodge a post-nuptial citizenship declaration. However, since 29th November 2005, this process of making a declaration of citizenship after the marriage no longer exists. Immigrants who married Irish citizens on or after 30th November 2002 may apply to become an Irish citizen through the process of naturalization. According to Irish law, the applicant must be “married to that citizen for a period of not less than 3 years.”

is not just that; the law requires "that citizen are living together as husband and wife and that citizens submits to the Minister an affidavit in the prescribed form to that effect."456

Ike is walking a tight rope since according to the law spouses must be living together as husband and wife at the time of the application for naturalization, and also one applying for naturalization must still be married to the wife or husband at the time of the interview and swearing-in ceremony. Ike was quite aware that if he is separated from his wife, even if the separation is not a legal separation, he would not be eligible to apply for naturalization, based on his marriage to an Irish spouse.

Alternatively, Ike could apply in his own right without relying on the spouses’ nationality, but that would mean that the residence requirement for him to do that will be longer. For him to apply, he is expected to have “five years of reckonable residence in Ireland out of the last nine years”457 before the application is lodged. A foreigner can claim citizenship by marriage if the marriage to an Irish citizen is valid under the Irish law.

5.6. Working with migrants: Maria, Ife and Dozie

Three interviewees who work with faith-based migrant service NGOs shared their experiences of working with African migrants in Ireland. From their work experiences they all concurred that among immigrants, there are considerable numbers of people forced to live in fear on the margins of the society because of immigration policies.

456 Ibid.

5.6.1 Maria

In her work Maria has met many desperate migrants who increasingly become anxious about their immigration status. This anxiety she said leads to many psychological problems and even people attempting suicide. Immigrants who have no hope suffer in their individual lives, and these sufferings are tragic consequences of the system that shows no toleration on undocumented immigrants, who often live in fear of the unknown.

She talked of Eric whom she met some time ago as he came searching for spiritual assistance. Eric was a migrant who said he had spent fortunes coming to Ireland to look for a better life. He made an asylum application and was hoping for a positive response to his application. However in the present situation, he did not have any hope that his application would be accepted. Eric feared he would be removed at some point as he had seen some of those he knew being removed from the country. According to her, Eric feared returning home to the poverty he left behind in his family years ago, he feared that one day he might be deported if he continues to be undocumented.

Eric claimed he has not even paid off the debts he incurred prior to his coming to Ireland, which helped him finance his movement. He was left with nothing only living in fear of what might happen to him next. As someone who has been involved with migrants in the last few years Maria claimed she has met a lot of desperate migrants in similar conditions to that of Eric. Maria summarizes her view about immigration and the undocumented in this way,

[U]ndocumented migrants should be given a route to legal status; this will be helpful to them and can give them new life so as to look for jobs they can do in order to contribute more to the growth of the economy. The lack of legal status for immigrants and their lack of hope can be a catalyst for them to try out terrible things.
5.6.2 Dozie

Dozie works for the spiritual needs of immigrants in one of the churches in Ireland. According to him:

[T]here are many people I meet who are helpless in their situations because of their immigration status. Many of them come for spiritual help and even miracles as they have become frustrated in their search for immigration status in Ireland. There is a need for something to be done to give undocumented migrants a place in the society; it will enable them to work and pay tax, thereby, contributing to the growth of the economy.

According to Dozie, it is quite evident that undocumented migrants who come for spiritual assistance are on the look-out for any little jobs they can do to keep body and soul together, even though they are not legally allowed to be in employment. He argued that the government should allow undocumented people to get temporary or permanent employment and regularize their stay so as to pay taxes. Instead of creating a situation where people who are undocumented work for unscrupulous employers for meagre amounts, without having any legal status, they rather should be allowed legally into the labour market where they can work and contribute more vividly to the economy.

For Dozie, “these migrants are suffering terribly in this situation and at the same time the government is suffering by not making use of the available manpower.” Dozie confirmed that, from his observations working among immigrants, undocumented people are always afraid of their future. As he said,

[S]ince these immigrants know they are undocumented, they are always fearful and very vulnerable to possible mistreatment or exploitation in the hands of those who use them as cheap labour. Undocumented migrants are afraid of authorities like the police; therefore, many go through horrible experiences without reporting them to the police lest they are found out.
According to him, this is one of the reasons why abuse cases that normally should go to the police are sometimes brought to the pastors and spiritual leaders. Dozie concluded by saying that,

I live and work in Ireland among immigrants from Africa, and I have seen an awful lot of problems caused by lack of immigration status. There are people who are almost ‘trapped’ for years. They cannot travel out of Ireland because they are undocumented or their immigration status is not resolved. They cannot travel out to see family members or they will be locked out or even apprehended. There are those who live in poverty because they cannot find any reasonable thing to do because they lack the permit to work. There are many who have exhausted all possible means to get a legal status but have failed, they only depend on the prayers from their spiritual leaders.

5.6.3 Ife

Ife who works among immigrants providing spiritual animation and care, talked about some people she has met in her work who have left their families, wives and children to come to Ireland in search of greener pastures but have been caught up in traps due to strict immigration rules. She talked of Chindi who came to her for guidance. Chindi left three children and his wife in Nigeria and came to Dublin legally in 2008, but was out of job since late 2010 and his visa expired.

Chindi felt that he had worked and paid tax while he had a job, but he seemed to be afraid of what was going to happen to him if he stayed longer without finding a job. Meanwhile, he was undocumented and could not support his family at home because he had no permit to find a job. He equally could not travel out because he would not be allowed into Ireland again since his working visa expired. Ife rightly observed that strict immigration control has made many immigrants live in fear and desperation, with many in dire need of financial and moral support. Some have overstayed their visas and cannot find jobs, some have been made
redundant in the midst of scarcity of jobs, while some have been refused asylum and live rough and undocumented.

Though many have lived for years with no legal status, they do not have hope of regularizing their stay as there is no mechanism for addressing their situation. It is a situation where people live their life in the shadows, being constantly haunted by fear of deportation and insecurity. Not just that, the inability to effect any change in their immigration status inadvertently widens their vulnerability to more exploitation.

Conclusion

Immigrants from the South East of Nigeria living in Ireland have varied experiences of immigration control in Ireland; the same applies to all others who are classified as Third Country Nationals from the global South. Amongst those interviewed, those who live and work legally in Ireland have had their lives transformed and they enjoy a better quality of life. Though this is the case, they face all sorts of challenges from the renewal of their work permits, to difficulties in exiting and re-entering the state, to family unification and in some cases gaining naturalization. Those who have come to Ireland on study visas have to convince the authorities yearly that they are not going to be a burden to the society. They do this by clearing their fees, and showing evidence of enough finances to be allowed to stay on in their seven year student’s life span in Ireland.

As avenues for seeking asylum are tightened through the Dublin Convention, asylum seekers in Ireland and other EU countries face a Herculean task as the possibility of moving from one country into another has been minimised drastically. For asylum seekers in Ireland, their
cases will be decided only here, and some of them go through a ‘limbo’ experience while they wait for decisions on their cases.

On the other hand, those accepted to be refugees are quite happy to be given a lifeline. However, despite the long wait for many before being accepted as refugees, a substantial number feel that they are not welcome in the society because some who have claimed to be refugees have been perceived to be ‘bogus’. Moreover, being accepted as a refugee in Ireland does not guarantee permanent settlement, refugees still face the possibility of being returned to their home countries.

This chapter has shown that no matter how strict and tight immigration controls are, there are still a substantial number of people in Ireland who are deemed to be illegal immigrants. It has to be understood that many who are classified as illegal may have come into the country legally and many factors as have been shown have often contributed to migrants’ subsequent illegality.

Above all, both those who are legally resident and those illegally resident, experience the tough measures of border controls, both externally at the borders and internally in their day to day living in Ireland. Though this is the case, many share a sense of optimism that their stay in the country has improved or will improve the quality of their lives. It is important to note that the route of marriage to EU citizens seems to be an interesting route to permanent residency taken by a significant number of interviewees.

Considering the accounts of these immigrants in chapters four and five, their experiences which include discrimination, surveillance and the human impact of undocumented status, draws our attention back to the ethical debates about the rights and wrongs of open or highly restricted borders. In the light of these debates, the next chapter focuses on the analysis of these migrants’ experiences and what they reveal about the ethics of current EU border. The
principles of the consequentialist cosmopolitan framework, which was advocated in chapter three as providing a helpful middle ground on which to base border ethics between the extreme claims of communitarianism and cosmopolitanism, will be used to assess the ethics of the current regime and make a case for necessary policy reforms.
CHAPTER SIX

ANALYSIS OF FIELD WORK: MIGRATION EXPERIENCES AND THE ETHICS OF BORDER CONTROL

Introduction

The research reported on in chapters four and five was of a qualitative nature with the interview method used to gather information from 65 participants about the migratory experiences of people from South Eastern Nigeria. While there is growing interest in migration research from many different disciplines, the findings of this research will be used to make an ethical evaluation of the current border regime from the consequentialist cosmopolitan perspective outlined in chapter three.

This chapter reflects on the interviews to lay bare the human reality of the EU’s external and internal borders. On the basis of these embodied experiences it will be argued that the highly restrictive nature of the borders in effect hinders migrants’ freedom of choice which as explained in chapter three, is the metric of wellbeing in a consequentialist cosmopolitan platform. Moreover, migrants who are the subject of highly restrictive border regime in Europe are prevented from maximizing their general well-being which is the goal of consequentialist cosmopolitanism.

For TCNs the attainment of genuine wellbeing is very much dependent on their capability to make a choice concerning their place of residence where their life opportunities will be maximized without much hindrance. It will be argued that the field research shows that the evidence of discrimination and profiling against those who try to enter legally, the stratification of migrants’ rights post migration, and the human consequences of irregular
journeys suggests that the current border regime is highly questionable from a consequentialist cosmopolitan perspective.

However, while recognising that the current border regime restricts the general well-being of migrants from the global South it equally has to be acknowledged that border checks in some form do remain consistent with consequentialist cosmopolitanism as this ethical framework recognises "the principle of self-determination". Citizens have a claim to what they collectively own, so the right of entry for migrants has to be balanced against a prima facie equally valid right of original residents to preserve their societal political projects. Yet, as consequentialist cosmopolitanism recognises the principle of self-determination, it equally presumes the existence of a human rights regime as both should contribute to the design of the political structure of a consequentialist global political system. So while borders protect the principle of self-determination, at the same time the border regime should not allow violations of human right, discriminations of any particular group or unequal treatment of people.

A consequentialist perspective, holds that "our actions are right or wrong because, and only because of their consequences" \(^{458}\), and this chapter analyses the experiences of the interviewees by this standard. As a result of what is revealed about the consequences of the border regime for migrants, one begins to see the need for a reformed arrangement of borders, especially for those who are subjected to these restrictions. To satisfy a consequentialist cosmopolitan ethic, borders need to be fair to all human persons. Realising this requires a renascent EU border regime, a regime that will offer more transparent and lenient visa policies for immigrants coming from selected third countries, who face many visa restrictions presently at the EU border posts, while still preserving the rights of existing members to preserve their societal projects as they enable welfare and security. On this basis,

the chapter closes by suggesting changes to policies in the present EU border regime; changes that could create a \textit{moderately open border regime} in a more consequentially cosmopolitan world order.

Cosmopolitanism proposes that the ultimate unit of moral concern are individual persons.\textsuperscript{459} Its basic premise is that moral value is ascribed to each human person.\textsuperscript{460} As outlined in chapter three, something essential about cosmopolitanism is that it connotes "the ethical and political space which sets out the terms of reference for the recognition of peoples’ equal moral worth, their active agency and what is required for their autonomy and development."\textsuperscript{461}

In line with cosmopolitanism, consequentialist cosmopolitanism is derived from “an ethical theory of choice based consequentialism and a political theory of cosmopolitanism.”\textsuperscript{462} Consequentialist cosmopolitanism is distinguished from other theories on the basis of freedom of choice which is the metric of well-being.\textsuperscript{463} The ability of each individual to choose by themselves guides us in identifying what well-being is for them. Consequentialist cosmopolitanism emphasises the centrality of being able to choose life option/make choices which lead to individual flourishing and for this to be realised it assumes the necessity of a framework of human rights. In the following analysis, the experiences of the interviewees will be re-visited in order to analyse whether the border regime meets consequentialist cosmopolitan standards in relation to these three criteria: did the EU border regime enable freedom of choice; did the border regime promote their well-being/human flourishing and did the border regime respect human rights?

\textsuperscript{459} Chapter 3, p.77
\textsuperscript{460} Ibid., 77-78
\textsuperscript{461} David Held, 49
\textsuperscript{462} Raffaele Marchetti, \textit{Global Democracy : For and against}, 36
\textsuperscript{463} Ibid, 40
6.1.1. The EU border regime and freedom of choice

It is certainly the case that in its legal framework the EU border regime does not grant TCN travellers freedom of choice in relation to border crossing. Third country nationals have to apply for a visa to enter the EU and then the Common Manual on the Crossing of EU External Border clearly distinguishes the treatment to be given to EU citizens, who should undergo ‘minimal check’, from that which is given to TCNs who must undergo ‘thorough check’.

Only TCNs are to be subject to “a thorough check” on entry in any European states’ border as defined in section (a). For third country nationals like the interviewees going through a ‘thorough check’ means that questions surrounding the conditions of their entry, as found in Article 5 SIA have to be asked again and their documents verified in relation to the answers given. Moreover The Common Consular Instructions, implies that “mere possession of a uniform (Schengen) Visa does not entitle automatic right of entry” and this is equally reiterated in The Irish Immigration Act, 2004, Section 4. Furthermore, The Irish Immigration Act of 2003 requires carriers to check documents, including visas before

464 Schengen Implementing Agreement (SIA) of 14th June 1985, Article 6(2), section (c).
465 Ibid., Article 6(2), section (c); SIA Article 6,Section (a) states that “Checks on persons shall include not only the verification of travel documents and the other conditions governing entry, residence, work and exit but also checks to detect and prevent threats to the national security and public policy of the Contracting Parties. Such checks shall also be carried out on vehicles and objects in the possession of persons crossing the border. They shall be carried out by each Contracting Party in accordance with its national law, in particular where searches are involved.”
466 Article 5 (1) (a-e) states the conditions for entry, i.e. the entry requirements for stays not exceeding three months. “(a) that the aliens possess a valid document or documents, as defined by the Executive Committee, authorising them to cross the border;(b) that the aliens are in possession of a valid visa if required; (c) that the aliens produce, if necessary, documents justifying the purpose and conditions of the intended stay and that they have sufficient means of subsistence, both for the period of the intended stay and for the return to their country of origin or transit to a third State into which they are certain to be admitted, or are in a position to acquire such means lawfully;(d) that the aliens shall not be persons for whom an alert has been issued for the purposes of refusing entry;(e) that the aliens shall not be considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties.”
467 Common Consular Instructions on visas for the diplomatic missions and consular posts (2002/C 313/01) No. 2.1.
allowing individuals to board aircrafts. States now rely heavily on ‘carrier sanctions’ using non-state actors and non-nationals to check immigration status.

Given this framework it is clear that TCNs do not have freedom of choice when it comes to EU border crossing. What is clear from the interviews is that any freedom of choice is further constrained by border regime practices such as profiling and discrimination, non-transparent decision making and categorization/on-going surveillance.

In the present EU immigration regime, some countries are placed on the “positive visa list” while some others are placed on the “negative visa list.” For those on the negative visa list, like the participants in my interviews, there are various conditions visa applicants must meet in order to obtain a visa. Visa applications from countries on the negative visa list are susceptible to intense scrutiny before any approval and in many cases this leads to a prolonged processing or denial of their applications as seen frequently in the interviews.

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468 Irish Immigration Act, 2003, Section 2; Airlines in Europe are fined for carrying passengers with dodgy documents or without a visa to their destination, and in order to avoid paying penalties, airlines originating from the third world and coming into Europe routinely and properly check their passengers before they board the aircrafts.

469 In the normal circumstances, the inability for one to secure a visa should not prevent someone from landing at the ports of any country; this gives opportunity for people like asylum seekers. In the present regime of EU closed borders there are mechanisms that make visas a prerequisite for making journeys that will bring third country nationals to the ports. Private transport companies are made not to carry anyone who do not hold the required visas and/or travel documents to arrive in the territory of the EU, failure to comply to this attracts heavy fine on the part of the transport companies. In essence these carrier sanctions practically threaten to undermine basic principles of refugee protection and the operation of the asylum process.

470 In many countries in the Southern hemisphere, there are immigration checks for people travelling out of their country, there are still other random checks passenger undergo prior to the boarding of flights, all these are meant to stop passengers who do not possess valid visas.

471 There is a joint list of third countries whose citizens are exempt from visa requirement by EU member states, as given by Council Regulation (EC) N0-539/2001, amended by Regulation (EC) N0 2414/2001, Regulation (EC) N0 453/2003 and Regulation (EC) N0 1932/2006. Interestingly, no country from Africa is included in this list initially, in the last few years only two (Mauritius and Seychelles) have been included. (See Chapter 1, pp.28-29)

472 There is equally a joint list of countries whose nationals are subject to visa requirement, when travelling to any EU Member State. They are bound to obtain visa by Regulation (EC) N0 539/2001, modified by Regulations (EC) N0 2414/2001; N0 453/2003; N0 1932/2006; N0 1244/2009, N0 1091/2010, and N0 1211/2010 (See Chapter 1, p.27 -28). Importantly, only Mauritius and Seychelles are exempt from this list, all other African countries are included in this long list of third countries that necessarily need a visa to cross EU external borders.

473 These requirements can only be judged to be valid or invalid by the visa issuing authorities. A bank statement, a letter from the employer or an invitation letter for a visa can be faulted by visa officials as not valid or even fraudulent. Requirements produced by an applicant can be deemed unsatisfactory or incomplete by embassy officials and any of these can lead to refusal of visa.
Moreover, it is observable that there is a lack of consistency in the way judgements on visa decisions are made considering the fact that the same documents used by applicants produce negative or positive effects, like in the case of Chima.\textsuperscript{474} Like Chima, many other applicants are aware that visa applications are a matter of trial and luck as reported by the Nigerian Newspaper \textit{The Vanguard}.\textsuperscript{475} Inconsistency has become one of the overarching characteristics of visa decisions as some applications are refused while some are granted.

\textbf{Restricted ‘Freedom of choice’ prior to entry: the interviewees’ experiences}

The interviews highlighted the cases of several individuals who showed their frustration as they recounted the structural problems encountered while making applications for a visa to EU countries. For example, Johnny claimed he provided the requirements needed by the German embassy, but was not successful in obtaining a visa.\textsuperscript{476} Max and Chigbo’s plans to attend conferences in France and the Netherlands failed as they were denied visas at the last minute.\textsuperscript{477} Ifeanyi was denied a visa more than three times before he finally got it.\textsuperscript{478} Oguji diverted his business trips to Asian countries as he experienced frequent visa denials at the EU embassies.\textsuperscript{479} Chima claimed he applied for a visa to visit the Netherlands, but his visa was denied on the ground that he could not produce all the needed requirements to obtain a visa.\textsuperscript{480} Considering the accounts of these individuals, one can say that visa denials is a

\textsuperscript{474}Chapter 4, 134 -137.
\textsuperscript{475} \textit{The Vanguard} reports “a common denominator in the facial expressions of Nigerians visiting the (foreign) embassies is frustration arising from disappointments often associated with refusals of their visa applications.” Emeka Aginam, Vera Samuel Anyagafu and Prisca Sam-Duru “Visa: Passing through the eye of a needle,” \textit{The Vanguard}, February 22, 2012, http://www.vanguardngr.com/2012/02/visa-passing-through-the-eye-of-a-needle/.
\textsuperscript{476} Chapter 4, 122-123.
\textsuperscript{477} Ibid.123.
\textsuperscript{478} Ibid. 131-132
\textsuperscript{479} Ibid, 124-125
\textsuperscript{480}Ibid., 134-137
common occurrence for applicants from third countries whose countries are included in the EU negative visa list.

Furthermore, although reasons for visa refusals are often given to applicants whose visa requests have been denied, participants do not see the processing of their visas as transparent enough, because the producing of entry requirements do not guarantee the granting of visas. Applicants feel a lack of transparency concerning the procedures for blacklisting people and a lack of transparency concerning how their applications are considered. Moreover, ethically, these individuals do not see why there has to be a different standard of treatment for some third country nationals. The reasons for determining whether a country should be placed on the ‘negative’ visa list appear to be insufficiently grounded. These individuals who stand blacklisted because of their nationalities view it as discrimination and unnecessary ‘profiling’ of a group of third countries.

For those interviewees who did cross the EU borders, there were also curtailments on their freedom of choice while crossing the borders. Participants told of their ordeals at the EU airport terminals while going to various destinations and at the border posts while seeking ‘permission to land’. For example, in Dublin, Marcel felt very aggrieved when he was subjected to rigorous interrogation at the port of entry. Like Marcel, Grace and Cynthia missed their flights because they claimed they were singled out for thorough checking by what they consider as ‘overzealous’ officials. On the same note, Chinazo claimed she has been treated often in an embarrassing manner even though her travelling documents are correct. In the same vein, Amara and Uzochi have questioned why they have to be

\[\text{Cholewinski, } \textit{Borders and Discrimination, } 20.\]
\[\text{Profiling} \text{ means ‘the recording and analysis of a person’s psychological and behavioural characteristics, so as to assess or predict capabilities in a certain sphere or to assist in identifying categories of people.” See, http://oxforddictionaries.com/definition/english/profiling.}\]
\[\text{Chapter 4, 126 ff.}\]
\[\text{Ibid., 125.}\]
\[\text{Ibid., 125-126}\]
harassed and suspected on the ground of their nationality.\textsuperscript{486} To add to these, Chubi felt maltreated as he was kept waiting for hours at the Spanish immigration post only to ascertain his entry requirements.\textsuperscript{487}

This is a feeling that is re-echoed in the account of immigrants who question the legality and morality of being singled out to be treated differently. These participants felt there were discriminations against them on the ground they are third country nationals who are purposely \textit{profiled} by the EU immigration system thereby empowering embassy and border officials to have a different standard of treating them.

\textbf{Restricted 'Freedom of choice'- after crossing the borders: the interviewees' experiences}

The sections above have shown how immigrants' freedom of choice is constrained before travelling and at the point of entry. The research findings have also shown that the highly restrictive nature of borders in relation to third country nationals is felt even after crossing the borders. TCNs go through many procedures in securing visas, boarding flights, changing flights and going through the ports of entry when they seek 'permission to land'. Even when they are allowed entry, the effects of highly restricted border controls are still visible in their daily lives even once they become resident. 'Surveillance'\textsuperscript{488} on immigrants is something that is quite apparent and the consequences of their categorization are very evident in the accounts of these participants. The accounts of participants like Ikenna,\textsuperscript{489} Ifeanyi and Dan\textsuperscript{490} who

\begin{flushright}
\textsuperscript{486} Ibid.
\textsuperscript{487} Ibid.,141-143.
\textsuperscript{488} The EU borders are under surveillance so as to restrict the entry of illegal immigrants, at the same time immigrants who have gained entry are subject to surveillance as their activities while being resident are kept in check. One’s immigration status determines how freedom to choose available options of life can be exercised, this suggest that their freedom of choice is quite limited.
\textsuperscript{489} Chapter 4. 136 ff.
\textsuperscript{490} Ibid, 131 -133ff.
\end{flushright}
lived in Europe show how much surveillance there is for migrants especially considering the category of their immigration status.

Immigrants are generally categorized between those who are legally resident and those illegally resident. However the surveillance extends to all, including those who are legally resident. Although Chime has been resident for years in Ireland, he complained of the scrutiny he undergoes at the border while coming into the country.\textsuperscript{491} Emre experienced the long and narrow road to naturalization in Ireland and he felt the impact of border restrictions while moving in and out of the country.\textsuperscript{492} In the case of Obi, renewal of his residency permit became a problem because he lost his job.\textsuperscript{493}

This research has shown how the tools of immigration control are used to keep surveillance of migrants, not just at the borders, but also in their day to day life. It is apparent that the closed border regime has transcended the visible external borders as borders keep shifting. By this I mean that borders have moved into mainstream EU society thereby, shrinking and limiting the opportunities of TCNs who are resident. Immigration control extends itself to a range of agencies within the countries and this extension is meant to keep surveillance over TCNs thereby, curtailing their freedom to choose from available life opportunities.

Borders are extended as immigrants have to carry identity cards or passports in case it is demanded at any given time.\textsuperscript{494} Aside from this, there are all sorts of ‘virtual databases’ that store peoples’ identification which can easily be verified when needed. The EU immigration framework has been built into a technology which is used to distinguish migrants in a subtle

\begin{itemize}
\item \textsuperscript{491} Chapter 5, 152-154.
\item \textsuperscript{492} Ibid., 154-157.
\item \textsuperscript{493} Ibid., 157-160.
\item \textsuperscript{494} In the case of Ireland, immigrants are supposed to register their presence with the Garda National Bureau who issues them with the ‘Garda Card’. The Garda Card becomes a sort of an ID for immigrants as they are supposed to present it when searching for work or when asked for it by the police.
\end{itemize}
manner through “social sorting.” In this sorting immigrants are categorized in various ways, those highly skilled and those unskilled, long term residents and short term residents, the documented and undocumented, etc.

The immigration status of any third country national determines the *life options* that are made available to her. Present border arrangements entail a proliferation and divergence of different immigration statuses which have related bundles of rights attached to them. It is these associated rights that determine residence, work, socio-political participation and other social rights. The result is that some people potentially become members thereby having more life options while some have their options very much limited.

However, it has to be said that the restrictions imposed on third country nationals makes them more inventive to use any loophole in the law that favours them. For example, marriage to an EU citizen as reflected in the stories of Amara, Phili and Ifii and many others. They find this as the easiest means of gaining residency status; hence those who want to increase their opportunities look for such avenues thereby entering into sometimes unsustainable relationships. In this dynamic, marriage with an EU citizen is seen as an available option that enhances life opportunities. For example, after studying and failing to get a job to live legally, Oluchi took the only option she thought was available to get residency by getting married to an EU citizen. It becomes apparent that TCNs marry EU citizens for many reasons but including the possibility to enjoy more life options. While this is the case, the experiences of residents like Amara show that immigration rules consistently ‘categorizes’ and divides family members, they create borders even among children born of the same

495 Dijstelbloem and Meijer, eds., *Migration and the new Technological Borders of Europe.* (Basingstoke: Macmillan, 2011), 12. (Here border is seen as a “refined sieve”).

496 Chapter 5, 161 – 166.

497 Chapter 4, 132 ff.
parents as one can be ‘fortunate’ to qualify to be a citizen thereby having more rights and the other ‘unfortunate’ to remain an alien.\footnote{Ibid., 161 ff.}

Generally, migrants’ rights are very much stratified as differential rights are allocated to them and it is these rights that determine the options of life available to them. This is vividly seen in the classification and admission procedures, and other conditions and restrictions along the line of immigrants’ nationalities, skills levels and even their socio-economic status. The stratification of the rights of immigrants in the EU is quite clear in the \textit{EU Council Directive 2003/109/EC of 25 November 2003}. This Directive draws a distinction between TCNs who are ‘long-term residents’ and TCNs who are ‘legally resident’, but whose residency is considered ‘precarious’ or short-term, even though they may have been resident for years.\footnote{Those excluded include, refugees, asylum seekers awaiting a decision on their status, seasonal workers or workers posted for the purpose of providing cross-border services, persons who have been granted temporary protection or a subsidiary form of protection and persons residing in order to pursue studies or vocational training. See “Status of non-EU nationals who are long-term residents,” http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/123034_en.htm; The directive Article 3 2(a) – 2(e) Specifically excludes individuals who fall on this category, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0109:EN:NOT
\footnote{Chapter 5, 154 ff.}

Such people, like those studying, are not strictly considered residents even when they have stayed for years. The length of their stay does not give them any entitlement. In this understanding, people like Eme\footnote{The immigration stamp one holds in Ireland determines the rights one has as a migrant. Through the stamps, some people are specifically excluded from entering into any employment while they stay in Ireland.} whose residency status is based on work permits have more rights than students whose residency is considered in a different way. Immigrants are subject to various forms of restrictions considering their different ‘immigration stamps.’\footnote{Chapter 5, 154 ff.}

The only way for TCNs to transcend the limitations posed by immigration borders and ongoing surveillance is by naturalization and citizenship. Most EU states primarily base citizenship on ancestry (\textit{ius sanguinis}) rather than on place of birth (\textit{ius soli}), though many
citizenship laws contain elements of both. For TCNs in Europe, full political and civic rights may be acquired through the process of naturalization (*ius domicile*). It has to be noted that Ireland before 2005 was notable for granting citizenship to all Irish born children,\(^{502}\) but this law has been revised.\(^{503}\)

In many EU countries, as in Ireland, eligibility for naturalization is defined on the basis of the length of stay or through marriage with an EU citizen. It is easier to be naturalized through marriage with an EU citizen than the length of stay which is often interpreted differently.\(^{504}\)

However, marriage equally requires length of stay in marriage before naturalization. TCNs like Oluchi,\(^{505}\) Chika and Emeka\(^{506}\) or Ike,\(^{507}\) married EU citizens as the best possible option to have immigration status and become citizens. Citizenship becomes the avenue through which immigrants seek to increase their life options, but for those unable to do so they are left with not many choices. As has been noted, the citizenship and naturalization process is complicated on the ground that it requires long lists of documents needed for the application to be lodged and in many cases requires a long wait. On the other hand, it often includes “vague conditions”,\(^{508}\) which often are subjected to diverse interpretations.

In summation, ‘borders’ are existent in the life of immigrants prior to their entry and even after crossing the physical external borders. Borders extend beyond geographically situated borders. They are extended through the various immigration statuses so as to prevent migrants’ access to rights or becoming full members. As Sorenson has argued, the ‘closed’

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\(^{502}\) Since 2005 this automatic rights to citizenship to all children of immigrants in Ireland was revised, except one of the Child’s parent or grandparents have Irish citizenship or if the parent had been living in Ireland for three of the four years preceding the child’s birth.

\(^{503}\) See, Chapter 1, 44 ff.

\(^{504}\) Using Ireland as an example, an immigrant who stays in Ireland for five years on the basis of work permit can apply for naturalization, but one has to prove that he/she merits naturalization since *it is not a right*. The years an immigrant spends are interpreted differently; there are years that are not reckonable. For example, years spent as a student, even if the student pays more tax than those working are un-reckonable.

\(^{505}\) Chapter 4, 132.

\(^{506}\) Ibid., 137.

\(^{507}\) Chapter 5, 182-184.

border regime of the EU has an "exclusive character" against non-EUs and more especially some third country nationals who are regarded as second class.509

Human beings are morally equal, an immigration regime that encourages moral inequality between third country nationals who are kept under surveillance and the others is questionable. Secondly, a regime that creates imbalances among third country nationals themselves through various categorizations which constantly creates cleavages of inequality does not in essence satisfy the demand of cosmopolitanism and consequentialist cosmopolitanism. This is the case because as a consequence, stratification of immigrants' rights and their surveillance drastically limits the options of many migrants who are not fortunate to enter into a better immigration category.

Although it will be acknowledged from a consequentialist cosmopolitan perspective (in section 6.2), that it is acceptable to properly check those crossing state borders, this section has highlighted the constraint on freedom of choice placed on migrants through the experiences of the participants. While the formal rules are a barrier to their freedom to choose to move, the additional experiences of discrimination and profiling, lack of transparency and surveillance and categorization, culminates in a system that allows selected third country nationals to be unequally treated at the borders. When some particular people are singled out, profiled and discriminated against at the borders, it has to be concluded that the current border regime does not meet the consequentialist cosmopolitan standard of freedom of choice as the basis for well-being.

509 Jens Magleby Sorenson, The Exclusive European Citizenship; the case for refugees and immigrants in the European Union (Aldershot; Ashgate publishing, 1996),152-172.
6.1.2 The EU border regime and human well-being.

A critical analysis of the accounts of the interviewees clearly shows the direct impact of the EU restrictive border regime on the well-being of migrants. The promotion of human well-being is something important in a consequentialist cosmopolitan framework, therefore if the present EU border regime does not offer third country nationals the opportunity to enhance their well-being, it means it falls short on this ethical account and would therefore need a radical review.

The research shows that prevention of migration can lead to the perpetuation of poverty because those migrants who do settle are generally better off and there are indications that the wellbeing of their family members and their communities back home are also to some extent improved. Among the interviewees, migrants who successfully crossed EU borders and are now settled in Europe clearly admit that they are better off living in Europe than in their home country. For example, Chime's migration to Spain and finally to Ireland has significantly improved his life. As a taxi driver he admits his general wellbeing as an individual has improved more than it would have been if he did not take the risks of migrating to Spain through Equatorial Guinea and finally to Ireland. TCNs in his words, "want a better life and more rewarding jobs or business, and in my own case, my movement to Ireland is a success." On the same note, Eme migrated to Ireland in 2003 and has long since naturalized, he considers himself as a successful migrant whose wellbeing has been improved through migration. Migration of people to the EU and other developed nation gives migrants more opportunities to improve their life options thereby enhancing their

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510 Chapter 5, 152 ff.
511 Ibid. 154
512 Ibid., 154 ff.
wellbeing. It has to be noted that "differential variables" such as wage differences between developing countries and EU countries is quite significant in improving the wellbeing of anyone who successfully migrates to Europe as in the cases of some of these interviewees.

Considering the differential variables, the disparity in wages between rich EU countries and poor countries in Africa is vast. For example, Chime confirms that his salary is thrice what he was receiving while working at home in Nigeria, and he is able to care for his family and some family members back home. University graduates from poor countries are often "better off financially driving cabs" in developed states than doing graduate work in their home countries. One can equally retrain to be a carer or work for security companies, and they are sure of more decent wages than they would have had in Nigeria or elsewhere in Africa.

Among the interviewees, women like Amara, Phili and Ifii have through migration given themselves a chance to stand on their own rather than just being dependents of men despite the difficulties they encountered in the process of their migration. Many women like them have improved their lives and also the lives of their children and family members back home through migration. Despite the difficulties many migrants encounter it is evident that their lives are improved, particularly in material terms, they are better off than what would have been the case if they stayed back in their home country. Further than this, their family members and communities in many cases are equally improved.

Myron Weiner has shown that there are four ‘clusters’ of variables that can affect international migration, the first is characterized as differential variables such as wage differences, the second variables are spatial such as distance and transportation costs, the third is affinity variables such as religion, culture, language and kinship networks while the fourth is access variables which are the rules for entry and exit. (Myron Weiner, “on International Migration and International Relations” International Migration 4, at p.6).

Chapter 5, 152-154; Also Chinedu’s stay in Europe helped him set up a business in Nigeria which today is quite successful, Chapter 4,127-131; It is observable that migrants who live and work in Europe can take care of themselves and equally create job opportunities for those left at home.

Legrain, Immigrants, your Countries Need them, 16.

Chapter 5, 161 ff.
Successful migrants in Europe are often of good help to their family members either by bringing them over through family reunification or being of economic help to members of their family. This is seen in the accounts of Mama Beni whose son lived in Germany, Ndaa Phili who claimed his son living in Europe is quite helpful to his family and the village community as he built a water reservoir for the village and gave some scholarships to various children.\textsuperscript{517} On the community level, Igwegwe, a local chief in Ideato Imo State Nigeria, stated that his community has been much developed by the resources of people who live in Europe.\textsuperscript{518} Some others among interviewees like Chief Chidozie\textsuperscript{519} equally confirms the rural communities are being improved thanks to the help of migrants in the developed worlds.

This means that migrants from poor nations who come to Europe to work are potentially capable of transforming their lives and improving their general wellbeing. They hope to have better economic status than they would have while working in their countries of origin, and this is likely to benefit those they have left in their home country. For example, developments in the rural Igbo communities are often associated with ‘Igbos in Diaspora’ most of whom are living in the developed worlds like Europe and America.\textsuperscript{520} The crucial thing is that immigrants from developing countries can make more money than they would make in their countries of origin, and they are almost sure of more quality life while living in Europe.

It goes to show that when migrants are allowed to settle in European nations there is the likelihood of their being lifted out of poverty and their wellbeing is improved. However, through the present categorization of migrants between legal and illegal, the EU border regime indirectly perpetuates more poverty as many who are already living in Europe are excluded and not allowed to work and improve their wellbeing. In such categorization,
associated rights have been opened up for some groups, but not for others, the rights of
different categories of migrant status have become increasingly stratified thereby preventing
some migrants from improving their general wellbeing.

As immigrants are generally categorized between those who are legally resident and those
illegally resident, those who are illegally resident like Ikenna, Ifeanyi and Dan have to
live under surveillance and are prevented from working even when they have found those
willing to employ them. Furthermore, asylum seekers in the EU countries are not allowed to
work and improve their wellbeing while they seek asylum. The biggest problem faced by
asylum seekers is the so called ‘legal limbo’ where they have to wait (sometimes for many
years) for their application to be approved. Asylum seekers like Paul, Vin, and Eric waited for
years seeking approval of their asylum applications.

The reality is that asylum seekers can wait for so many years waiting for decisions to be
taken, and while this is the case they are not allowed to work or seek employment before the
approval of their applications. Asylum seekers like Nwanna, Uchenna and undocumented people like Chiaka are not allowed to seek employment to improve their
wellbeing and this makes life more difficult for them. Bearing in mind that some people
become undocumented not because they came in illegally, but because they are not able to
renew their papers, it might be reasonable to allow them access to the labour market while
they are still in the country so as not to jeopardise their wellbeing. As already shown, the
categorization of immigrants creates more fault lines of poverty and social inequality among
immigrants as there are those with ‘rights’, who potentially can enhance their wellbeing, and

521 Chapter 4. 136 ff
522 Ibid, 131 ff
523 Chapter 5, 167 ff.
524 Ibid., 168 ff.
525 Ibid 185 ff.
526 Ibid., 176-177
those who practically have no rights. Those who have no ‘right’ and are deemed illegal find themselves trapped and are often ashamed of going back home poorer than they were, as many in the process of their migration become hugely indebted.

The EU borders equally fall short in promoting human wellbeing when we consider the dangers encountered by people who opt to travel illegally due to the highly restrictive nature of EU borders. Many who are not able to provide the requirements needed to obtain a visa out of desperation pay enormous amounts to smugglers. As was seen in the interviews, due to strict border controls some migrants see the option of travelling illegally as worth trying. For example, Chinedu paid about 3,000 Euros to his smugglers to be ferried eventually in an overloaded boat as he embarked on a nerve-jangling journey across the sea to Europe.529 Anyi spent about 4,500 Euros to be smuggled to Kiev in Ukraine even though he was later deported.530 Ken paid 4,000USD to his smuggler but was still trapped without reaching his destination, being asked to pay another 7,500 USD to be taken on to Portugal.531 On the other hand, Nwanna paid a sum of 2,500 to the middle man who legally brought him to Dublin, even though he took care of all other travelling expenses for himself.532 The EU borders regime indirectly creates openings where many who are not able to meet the visa requirements or who are denied visas are lured to the option of negotiating with ‘linkmen’ who promise to take them to Europe.

By travelling illegally migrants rights are vulnerable to abuse first by smugglers who help smuggle them and secondly when they are treated harshly by border guards. By land and sea, smugglers circumvent the most controlled border sections by shifting to more impassable and

529 Chapter 4, 127-131.
530 Ibid., 143.
531 Ibid., 143-145.
532 Chapter 5, 178-181
often more dangerous routes. This means that smugglers forcefully put their clients through dangerous situations and those smuggled are often dehumanized as they have no other options. Those being smuggled are at the mercy of their smugglers who can abuse them and even abandon them in the middle of nowhere, like the case of Ken. One thing for sure is that, human beings are daily paying the price of tight border control not just with the money which they pay heavily to smugglers, but also some pay a bigger price, ending up in exploitative situations or even endangering their lives.

Many leaky vessels avoiding border guards end up capsizing or being ripped apart by violent waves. Too many deaths of migrants have occurred between Africa and Spain, and more recently the Italian coast of Lampedusa and the coasts of Malta have become prominent in the last few years due to incessant capsizing of migrants' boats. The sea has taken a lot of migrants desperate to cross over to Europe. Many migrants' bodies are not found; some of the people who die are simply not accounted for and their families who believe they are in Europe are not even aware of their death. The EU border regime which is highly selective and restrictive prevents many people from crossing the borders legally, thereby driving them to cross the borders illegally. This almost inevitably undermines the wellbeing of those who opt to make these journeys as they encounter all sorts of dangers in the hands of their smugglers, while at sea and in the hands of border guards when they are apprehended. Allowing such practices to go on through restrictive immigration policies in essence does not promote the wellbeing of these migrants who are involved in these journeys out of sheer desperation.

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534 Chapter 4. 143 ff.
6.1.3 The EU border regime and Human Rights violations

A further premise of cosmopolitan consequentialism is that respect for human rights should form the basis of a just international order. Once again, analyses of the interviewees’ experiences in the light of human rights principles suggest ethical failings in the border regime.

Human beings irrespective of their economic or social conditions “are born free and equal in dignity and rights.” The UDHR further states that people are entitled to have rights stated in the charter without “discriminations” or “distinctions” made on the basis of their nationalities. Though the international human rights regime does not give immigrants the “right of entry” into other countries, there is the recognition that human beings must be treated “with respect for the inherent dignity of the human person.” In the first place the EU borders make distinctions between those who have “automatic right of entry” and those who have no “right of entry”. The absence of ‘a right of entry’ for many third country nationals even after receiving their visas implies they are subject to discretionary decisions. This becomes the basis on which their other rights as human persons can be violated.

Many participants reported feeling harassed on the basis of their nationality in a way that compromises their human dignity and right against discrimination. Many expressed that when they were randomly stopped at the borders, questioned or even detained because of their nationalities, it was done in a way that suggested their human rights meant nothing. The

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535 UDHR, article 1
536 Ibid., article 2
537 The Charter does not provide for the “right of entry” it only provides for “the right to leave ones country and return to it”. Article 13.2
538 ICCPR, article 10. 1
accounts of Marcel, Grace, Cynthia, and Chinazo at the EU ports of entry corroborates this. Also, Amara and Chubi’s accounts clearly showed how selected TCNs have no “automatic entry” at the EU borders on the ground of their citizenship. The reality is that the way citizens of some selected third countries are treated has become an accepted consequence at the EU border posts, because even possession of a visa clearly does not entitle them the right to “automatic entry”. It has to be emphasized that the recognition of the “inherent dignity” equality and inalienable rights of all members of the human family (including selected TCNs who face restrictions) should be the foundation of freedom, justice and peace in the world.

Furthermore, the UDHR provides that “everyone has the right to seek and to enjoy in other countries asylum from persecution.” The accounts of asylum seekers and those who because of present restrictive borders travel illegally like Chinedu, or those who become undocumented for various reasons show that in these scenarios human rights can be violated because of one’s precarious immigration status. Asylum seekers, illegal travellers and undocumented people become so much vulnerable as their human right to seek protection can be violated while they are in the process of doing so. The EU border regime falls short when people because of their nationalities or immigration status are sometimes “subjected to arbitrary arrest or detention.”

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540 Chapter 4, 126 ff.
541 Ibid., 125
542 Ibid., 125 ff.
543 Ibid.
544 Ibid., 141-143.
545 International Covenant on Economic, Social and Cultural Rights, see preamble
546 UDHR, Article 14. 1
547 Chapter 4, 127 ff.
548 ICCPR, article 9.1
The obvious thing is that even when migrants travel illegally they are probably running away from their homeland because of something. It could be war and conflicts, it could be poverty and destitution, but the most noteworthy thing is that they are normal people in search of survival and better life options. They are doing this to have a chance of pursuing their economic and social development which every other human being has a right to do. Therefore, they are people who equally need care and respect for their human dignity irrespective of what they are fleeing. A border regime that criminalizes human smuggling is acceptable, but a regime that criminalizes human beings who are being smuggled is in no way acceptable considering the fact that they are human beings and are pursuing better life options in constrained circumstances.

Participants have shown that in their bid to seek asylum the emphasis is shifting from the reasons why they are seeking asylum to ‘how’ they got into Europe. When people are undocumented they become more at risk of their rights being violated. Undocumented migrants are vulnerable because of their status as they cannot access services that more or less would reveal their immigration status. When they are employed, their employers can often abuse their human rights as they can make no claims. On this ground, they are afraid of the authorities and would not report crimes committed against them due to fear of their identity and status being revealed.

Once an immigrant becomes undocumented it becomes hard to travel out, to get a job, or to do anything that would warrant documentation; it is as if the immigrant has been trapped. Some migrants who are undocumented are cut off from their family members for an

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550 ICESCR, article 1.1
551 As has been shown, through the ‘immigration machine’ the EU has inbuilt surveillance control on migrants which focuses especially on TCNs and monitors their internal activities while in the states.
552 This is clearly seen in the case of Dan who lived in Austria and Holland. See, Chapter 4., 132 ff.
extremely long a time. Being undocumented like Chindi\textsuperscript{554} or Chiaka\textsuperscript{555} is seen as a life of ‘illegality’ where one has no status or rights accorded to her. In being undocumented and illegal in a foreign land, one’s life is ‘unsettled’, ‘unpredictable’ and ‘erratic’.\textsuperscript{556} The life of an illegal migrant can abruptly and dramatically be interrupted through detention or deportation. An undocumented person can disappear without a trace.\textsuperscript{557} Among the interviewees this was a life some people lived for years - some three, some five - while some even stay undocumented for ten years.

In a cosmopolitan framework, obligations binding states under international human right law are to apply both within the states and around their borders as there is impartial consideration of moral relevance.\textsuperscript{558} In this framework, although the EU states retain autonomy and control of their borders as will be shown in the next sections, they should serve as a device for the protection of individuals’ rights and human welfare irrespective of whether these individuals are documented or undocumented, travelling legally or illegally.\textsuperscript{559} The obligations to protect people apply irrespective of their citizenship, nationality or migration status.\textsuperscript{560} Against this background, the fundamental principle grounding human rights is the principle of equality and non-discrimination.\textsuperscript{561} Furthermore, the ICCPR requires states to ensure and protect the rights of “all individuals within their territory and subject to their jurisdiction... without distinction of any kind.”\textsuperscript{562}

\textsuperscript{554} Chapter 5, 187.  
\textsuperscript{555} Ibid., 176 ff.  
\textsuperscript{556} Khosravi, ‘Illegal’ Traveller, 69.  
\textsuperscript{557} Ibid.  
\textsuperscript{558} Chapter 3, 105 ff.  
\textsuperscript{559} Marchetti “Right to Universal Mobility: A Consequentialist Cosmopolitan Reading”  
\textsuperscript{561} Ibid.  
\textsuperscript{562} ICCPR, Article 2 (1).
As Hannah Arendt points out, in our present world, the ‘rights of man’ have become dependent upon governments rather than independent of governments. Migrants are right bearers, whether they are in their country of origin or at the doorpost of receiving countries, therefore, they deserve their dignity irrespective of their immigration status. Migrants at the borders cannot be treated as people with no rights because there are obligations owed to them on the basis of their humanity apart from being members of a common political society like the EU. Human beings whether they are TCNs, illegal travellers, asylum seekers or undocumented people deserve the ‘right to have rights’. Human rights should not be an abstraction, the undocumented as human beings should be true subjects of rights.

Concluding remarks on the current border regime and consequentialist cosmopolitan analysis

To conclude this section, it is evident in participants’ accounts that current regime of borders in the EU often denies third country nationals who require visas to come to Europe, freedom of choice, the opportunity for human well-being and the enjoyment of their human rights. The current border regime therefore contravenes in many ways the principles of a consequentialist cosmopolitan platform, which would require people to be treated in the same way irrespective of their nationalities.

Consequentialist cosmopolitanism entitles individuals to be independent choice makers concerning where they want to be to enhance their life options. Consequentialist cosmopolitan morality would therefore require that visa applicants be allowed free entrance to their countries of choice if they satisfy the requirements and to settle if they wish to do

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564 UDHR. 1948.
565 Arendt, The origins of Totalitarianism, 290-91.
566 Marchetti, Global Democracy: For and against, 52
Denying a visa applicant entry on the part of the EU, as was so often experienced by the interviewees, is a hindrance to one's *individual capability to freely choose options in life*.\(^{568}\) Moreover, when migrants are allowed entry into the EU states, it is important to accord them the rights that will make *their individual life generally better off* as this will contribute to world welfare in a consequentialist cosmopolitan order. When third country nationals are allowed the option to choose their preferred course of action "through a process of informed and effective personal deliberation"\(^{569}\) they can attain genuine well-being. However, as has been shown the EU border regime does not currently allow many of them to maximize their available life options especially when their access to labour market is particularly limited.

Therefore from a consequentialist cosmopolitan perspective, in the midst of job opportunities one who is resident within the EU should be allowed to work if there are jobs, whether they are EEA or TCNs, as they all should have the cosmopolitan right to do so. In opposition to a utilitarian evaluation of the presence of undocumented which would suggest that they have nothing to contribute to the welfare system, a consequentialist cosmopolitan approach would endorse the view that it is possible to provide welfare to individuals through the empowerment of their capabilities.\(^{570}\) This would entail allowing them to choose preferred life options so as to be able to provide for themselves and contribute to the system as others do.

Consequentialist cosmopolitanism would see undocumented migrants as *cosmopolitan citizens* who can be given the associated rights to access the labour market insofar as the

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\(^{567}\) Dummett, *On Immigration and Refugees*, 80.

\(^{568}\) Ibid.

\(^{569}\) Marchetti, "Consequentialist Cosmopolitanism and Global Political Agency" 59

\(^{570}\) Marchetti, *Global Democracy: For and against*, 45

215
prima facie valid right of original citizens is not threatened. However, it is also notable that the implementation of these consequentialist cosmopolitan guidelines would in no way make borders and states' autonomy irrelevant.

6.2 Analysing the fieldwork by consequentialist cosmopolitan perspectives: The legitimate concerns of EU states

From a consequentialist perspective, “our actions are right or wrong because, and only because of their consequences.” Consequentialist cosmopolitanism would recognize that European Union immigration policies should be judged by their consequences for everyone and this implies both natives and migrants included. This means that the application of a consequentialist cosmopolitan framework as the ethical basis of EU border policies in relation to third countries would require a balance between some degree of openness and closure. There is need to balance the rights of entry for immigrants who are subject to these EU policies and the right of natives who associatively have a claim of sovereignty and ownership of their societal projects.

Hence, a consequentialist cosmopolitan approach identifies the need for migrants to be given the ‘right’ to cross EU borders and increase their well-being if they choose to do so, but such a prima facie right has to be balanced with the rights of those who are already members.

It is important to promote the well-being of individual immigrants, but it is equally important

571 Marchetti, “Right to Universal Mobility: A Consequentialist Cosmopolitan Reading”
572 See Chapter 3, ‘consequentialism as an ethical theory’, 101-104.
573 Machetti, “Right to Universal Mobility: A Consequentialist cosmopolitan Reading”
to realize that these individuals are not "abstract" or "atomic", they will exist in communities that will be affected by their presence, hence the communitarian arguments which equally promote the wellbeing of original citizens cannot be summarily dismissed.

From a consequentialist cosmopolitan perspective which also takes into consideration the social realities of the presence of immigrants, the well-being of 'members' who definitely will be affected by the absence of border restrictions must be considered. Consequentialist cosmopolitanism recognises the right of sovereignty and therefore borders have to be maintained at least to a certain degree. It equally recognises the importance of duties owed to those who are natives and it recognises the claims of ownership which citizens make on their societal projects, as such projects exists because of citizens’ combined efforts.

6.2.1. The right to border checks: The principle of self determination

As said in chapter three, consequentialist cosmopolitanism treats the individual, state and the world together in an inseparable way as it is only through this that freedom of choice is 'maximised'. Consequentialist cosmopolitanism recognises the importance of the state as sovereign, and as such it is morally acceptable for sovereign states to have proper checks at the borders. Therefore, through 'the principle of self-determination' the EU is morally right in maintaining its autonomy and is bound to protect the associative projects of its members by not allowing borders to be completely open.

Since it is accepted in a consequentialist cosmopolitan platform that self-determination is important for states like the EU, it has to be accepted equally that those who are citizens whose efforts make the state what it is have duties owed to them by the state. As outlined in chapter two, communitarians see members in a state as having special responsibility to one

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575 Chapter 3, 111 ff.
576 Ibid. 110.
another since a state is a "community of obligation." Hence, people are born to inherit these obligations which they continue to fulfil towards their compatriots. As compatriots fulfil these obligations towards one another and to the state, the state equally has an obligation to care for its citizens.

In this line of thinking there is an acceptance that there exists a different obligation owed to those who are citizens. As argued in Chapter two, borders make the exercise of special duties possible. This means that whichever way those who are outside the state may be in need, there has to be a special duty to those who are compatriots. It is accepted that there are special duties which we have towards those who stand in some special relation to us. It sounds morally acceptable that a state has a special duty to care for its members whose efforts have contributed to the growth and prosperity of the state.

In the context of the EU, it is a legitimate concern of European Union governments to care for their citizens, any immigration policy that seriously jeopardizes the ability to care for members will definitely bring disastrous consequences to the EU. The EU has a special duty to care for its citizens and provide the guarantees and rights that equally will enhance their life choices and well-being. However, doing this does not imply that the EU’s duty only ends with those who are members; such duty can equally extend to the others who are at their doorposts.

From a consequentialist cosmopolitan framework where the well-being and moral equality of every one should be considered, without underestimating the importance of special duties to compatriots, what we ought to do as “moral persons” should not be limited to those who

578 Ibid.
580 See Chapter 2
582 Goodin, "What is So Special about Our Fellow Countrymen?,” 663

218
belong with us to the same community or nation; rather, we ought to have some moral obligations to those who share a common humanity irrespective of their citizenship. A transnational immigration exclusion based on a commitment to special duties owed to EU citizens cannot be totally justified in a consequentialist cosmopolitan approach as there is need to show "impartiality"\textsuperscript{583} at least to a certain extent.

The concept of special duties towards EU citizens is important for the existence of the institution; however, special duties can be understood to be part of general duties. Special duties embrace all \textit{associative duties},\textsuperscript{584} and all contractual duties, reparative duties and duties of gratitude.\textsuperscript{585} It is important to note that the EU has "special duties to compatriots" but special duties equally embody other sorts of competing duties that may cut across national boundaries.\textsuperscript{586}

Inasmuch as the EU has special obligation towards those who are members it cannot be overlooked that there are trans-domestic obligations towards non-members across EU borders.\textsuperscript{587} This does not deny the reality of special duties owed to those who are rightful EU members or citizens, but it clearly shows that the scope of EU's special obligation should extend beyond their erected frontiers. As some cosmopolitans have argued, inasmuch as there is need for special responsibility for those who are natives, the general duty owed to the others cannot be overridden as there is nothing too special about fellow countrymen.\textsuperscript{588}

What makes the EU worry about compatriots should equally make them worry about the rest of immigrants at their doorsteps.\textsuperscript{589} This is based on the fact that special duties towards EU citizens are part and parcel of general duties the EU has to other human beings; they should

\textsuperscript{583} Goodin, "What is So Special about Our Fellow Countrymen," 664.
\textsuperscript{584} Bader, "Reasonable Impartiality and Priority for Compatriots," 86.
\textsuperscript{585} Scheffler, \textit{Boundaries and Allegiances}, 49-50.
\textsuperscript{586} Bader, "Reasonable Impartiality and Priority for Compatriots," 100.
\textsuperscript{587} Ibid.
\textsuperscript{588} Goodin, "What is So Special about Our Fellow Countrymen," 679.
\textsuperscript{589} Ibid.,
derive the whole of their moral force from those of the general duties. This lends credence to the cosmopolitan claims that individual human beings are the ultimate unit of moral concern. This by no means diminishes the idea that there is need for special obligation, but it widens the scope of such obligation as all human beings have equal moral worth.

6.2.2. Protection of citizens and the social project

Borders are necessary for security and the protection of democratic values of citizens. Security of citizens is important and the liberal institution must be protected as a good. The EU as a body cannot be morally faulted in its efforts to protect its citizens and the valued social projects which have been built over time; they are unequivocally entitled in any circumstance to restrict the movement of those whose activities potentially can be destructive to the liberal institutions. A cosmopolitan right to cross EU borders can be denied if the right bearer obstructs the freedom and liberty of others.

In a consequentialist cosmopolitan framework, the importance of the state to provide for and protect its citizens cannot be overlooked. The moral obligation owed to citizens cannot be denied. Consequentialist cosmopolitanism recognises the importance of citizen’s societal projects which have been built over time. On the basis of “associative ownership” citizens deserve to benefit from what they have built over time and what they collectively own, a

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590 See Chapter 3, “the essence of cosmopolitanism.”
592 Chapter 2, 59 ff.
593 Chapter 3, 95 ff.
595 Chapter 3, 109 ff.
denial of such right will amount to injustice on their part and the denial of their fundamental right to ‘ownership’.

Moreover, a denial of the right to be in control of their goods will be hazardous to their well-being and the world’s well-being at large. However, an understanding that citizens have a ‘special connection’ to the good and the institution they have developed over time does not suggest that they restrict access to the institution in any way they wish. Exercise their right of ownership should not be in violation of the accepted moral standard. The accepted moral standard is that of equal moral worth of human beings that guarantees human autonomy and development. It is a moral standard that allows agents to choose from available options what is good for them and can lead to attainment of general well-being. In such a moral platform, those who are citizens need not treat non-citizens and those who wish to become members in a way that violates human equality.

It is accepted that EU states possesses absolute authority in determining who should be admitted and is the final arbiter on their boundary decisions. They have the moral entitlement to craft immigration policies according to their interests. But, while protecting the interests of citizens and their societal projects, immigrants have to be treated in a way that recognises their value as moral persons who are in no way different from those who are citizens. Treating them in a way that promotes human equality and giving them opportunities to enhance their life options and wellbeing are equally of primary importance in a consequentialist cosmopolitan framework.

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597 Held, 49
598 Marchetti “Global Democracy for and against”, 40 ff.
This is suggestive why a middle position between the poles of complete border openness and too much restriction is important to find. The search for such a balance leads to some practical recommendations necessary for a consequentialist cosmopolitan EU border arrangement. It has to be clearly conceded that citizens have the right collectively to decide over their destiny as sovereign state, including the standard for accepting membership insofar as such standard does not violate the dignity of other human persons. When a group decides over its destiny and the standard of membership, it is believed that such reasoning “constitutes an extension of individual right to freedom of choice to the collective domain.” This implies that consequentialist cosmopolitanism endorses the practice of states being in control of their destiny and in control of who can be accepted as a member, because this is their collective right. It will be ethically questionable from a consequentialist cosmopolitan framework to assume that anyone’s right of entry supersede the collective right of the sovereign EU states.

Although this is the case, the EU border regime must at the same time enable individuals (including non-members) to choose their life options while maintaining control of their borders as they have the right to do. It is only by enabling everyone as far as possible to choose life options that “a comprehensive normative treatment of the world social system (can) be provided.” A treatment that considers the interest of all individuals including migrants, the EU states and their citizens and the world in general as all but one whole.

Consequentialist cosmopolitanism values the individuals, the state and the world at large; these triple treatments are important for organising the world and the provisions of its social system. At the EU state level, there is the protection of a set of collective interests which

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602 Marchetti, “Right to Universal Mobility: A Consequentialist Reading”
603 Marchetti, “Consequentialist Cosmopolitanism and Global political Agency,” 60
604 Marchetti, “Consequentialist Cosmopolitanism and Global Political Agency” 59
forms the foundation of EU’s capacity to free self-determination. This entails that EU states can erect border checks so as to protect their interests and be in control of their destiny. However, border checks cannot isolate the importance of the ‘individual level’ where individuals’ socio-political capabilities to freely choose their personal life has to be promoted in various ways. It also cannot isolate the ‘global level’ where there is need for an international means to harmonize policies like that of immigration in the whole world at large.

At this global level, EU immigration policies should be in harmony with international humanitarian regimes like that of the UN and all its prescriptions concerning human rights, how migrants, refugees, asylum seekers and all undocumented people have to be treated. It is by this triple treatment of the individual, state and the world that the maximization of freedom of choice and world welfare can be achieved. While the need for self-determination is emphasized, there is need for a simultaneous and consistent implementation of the legal institutional guarantees found in the individual, state, and the world levels. Only through this can there be an adequate response to a multilayered social reality which the present EU border regime presents.

Consequentialist cosmopolitanism does not require the ‘renunciation of local or state identity’.

National or state belonging is part of a consequentialist global set up, however consequentialist cosmopolitanism demands something be added to state identity: humanity at large. This implies a consideration that requires each individual to be treated as a human person irrespective of nationality. Inasmuch as we are citizens of our states, we are all

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605 Ibid.
606 Chapter 3, 110 ff.
607 Ibid.
608 Marchetti, “Consequentialist Cosmopolitanism and Global Political Agency” 59-60
609 Ibid., 66
citizens of the world. Individuals are “inevitably intertwined”, an EU citizen is a citizen of the EU and at the same time a citizen of the world. A third country national from Nigeria, Kenya or Cameroon, despite their national belongings, are equally citizens of the world. Their entry at the EU border posts can be regulated according to the standard of those who are EU members as sovereign states; this is fundamentally accepted in a consequentialist cosmopolitan framework. However, such regulation has to accommodate the fact that those subject to the regulation are human beings, world citizens whose free choice of coming into the EU states is integral to their wellbeing and to world wellbeing at large.

6.3 Practical recommendations for moderately open borders in a consequentialist cosmopolitan world

The experiences of individual migrants have been used in this research work to make an ethical evaluation of the EU current border regime based on the normative framework of consequentialist cosmopolitanism. The research work has shown how the highly restrictive nature of the EU borders selectively prevents some migrants from maximizing their general well-being which is the goal of consequentialist cosmopolitanism. The present EU border regime which is highly selective hinders migrants’ freedom of choice which is the metric of wellbeing in a consequentialist cosmopolitan platform.

As a response, some recommendations are offered considering the fact that consequentialist cosmopolitanism tries to find a balance between the interest of natives and the interests of migrants. Though EU immigration policies are crafted to suit the interest of its members, the EU cannot ignore the consequences these policies impose on those who are not members like

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610 Ibid.
611 Marchetti, “Consequentialist Cosmopolitanism and Global Political Agency” 66
612 Marchetti, Global Democracy: For and Against, 40 ff.
third country nationals from the global South. In response to the consequences, these recommendations are meant to allow some degree of balance between openness and closure at the EU borders so as to create a balance between the interests of natives and migrants as well.

6.3.1 Abolishing the idea of ‘negative and positive visa lists’ and ‘airport transit visas’

The criteria used by the EU in placing a country on either the negative visa list or the positive visa list is not objectively transparent. However, it seems that the EU bases the negative/positive listings on a case-by-case assessment of several criteria relating *inter alia* to illegal immigration, public policy and security and to the EU’s external relations with third countries. As shown in ‘The preamble of the EU Visa Regulation’, some nationalities are deemed to be more susceptible to illegal migration and crime. Such clear distinctions used to divide people on the basis of their nationality negatively leave an adverse impact on people. It creates a situation where peoples’ races and even colour, not their individual circumstances, play a vital role in decisions concerning their admission.

Profiling categories of individuals who are merely seen as risks in terms of crime and illegal immigration into Europe increases the risk of discrimination against such a group of people. Human beings are different and may not always act in particular ways which conform to their stereotypes. Sufficient legitimate reasons need to be provided if people are to be blacklisted. For example if people do practically constitute a serious danger to those who are natives, there is every good reason to prevent this for their interest. But such reasons should be transparent and objectively visible, especially if those third country nationals who are blacklisted are in a real sense threats to other people’s liberty. However, at present, it is

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apparent that the statistics that justify this direct discrimination against some TCNs are not readily available in the public domain. Rather the negative and positive visa lists are premised on profiling whole groups of people and used to restrict their movement. They ought therefore to be abolished.

Also, the present EU border policy requires some Third Country Nationals to be in possession of airport transport visas (ATV) if they have to pass through any airport in the EU on their way to their destinations. This is also based on the assumption that the citizens of the listed countries pose more of a risk of illegal immigration and therefore, they have to obtain airport transit visas while they go through any EU airport. Such marginalization is ethically wrong, except when extremely good reasons are advanced for such significant differences in treatment. Migrants' nationality should not suggest a susceptibility to crime which is evident in the use of negative and positive visa lists and the imposition of airport transit visas. Classifying or profiling them in a negative way is incongruous with cosmopolitan ideals. Neither does their classification respect individual rights nor does it allow equal treatment of people as moral persons.

6.3.2 Creating a fairer visa issuing system

Third country nationals go through rigorous procedures because of stringent visa regulations. These regulations make the procuring of visas stressful as the bars of immigration requirements are constantly raised for them and the system for dealing with applications is entirely selective.

Short stay visas in a moderately open border regime should be easily obtained in a managed and controlled manner, just as it is for citizens of Europe. When EU citizens travel to third
countries, they often receive visas in the ports of entries except in some circumstances. Moreover, short stay visas should be renewable at least once, and should allow migrants to be eligible for some types of jobs if these jobs are available. I recommend that whatever the criteria used in issuing short stay visas, a return ticket provided by the traveller should be of paramount importance. The possession of a return ticket will guarantee that the immigrant can return, and if possible travel again since visas can easily be obtained. In this way, immigrants will not be a burden to the citizens whose normal life should not be disrupted by the presence of many idle immigrants unable to go back home who may find recourse to public funds.

Migrants who are successful in getting jobs on a long term basis can apply for long stay visas in the respective nation where they have found a job. Just as other non-Europeans like Americans and Japanese are given free entrance for up to 90 days, others like TCNs should equally be given such freedom and also the right to regularize their stay if they find jobs. Through this, third country nationals who are subject to present restrictiveness can freely make their choices and maximize their general well-being through the life options that are available in the EU countries where they find themselves. If visas can be easily obtained there is no reason why anyone should be involved in illegal immigration or be undocumented, as an immigrant could travel back home hoping to return at a different time. The highly restrictive visa regulation policy used against third countries affects everyone including all short-term mobility for business, private and tourist visits as shown in the research work.614

614 See Chapter 4, the cases of Johnny, Max, Chigbo and Oguji who only wanted short term visa for conferences, short visits or business trips.
In principle, moderate border migration policies should allow people entry, but at the same time regulate the entries at the borders in the interest of natives. Since there is a clear correlation between visa denial and illegal immigration as shown in the chapters four and five, moderately open borders can go a long way in preventing irregular migration, and secondly, enable control and management of regular migration into the EU. A managed and controlled immigration that respects migrants’ freedom of choice is ethically more desirable from a consequentialist cosmopolitan viewpoint.

Even if a migrant is running away from her homeland, the Human Rights Charter has a provision for that. It cannot be a crime to leave one’s country to seek protection elsewhere. A moderately open border will create pathways for people to seek protection, without having restrictive immigration policies infringing on their right to flee, if fleeing is their only option.

6.3.3 Reducing the ‘discretional authority’ and abolishing the idea of ‘permission to land’

This would mean removing the discretionary authority which border officials exercise at the border posts. This does not entail the demise of border checks as it is important for the natives and their interests, however it does imply the current untransparent use of ‘discretional authority’ that empowers border officials to stop or allow the entry of third country nationals even when they have obtained visas should be ended. Further than that, visas and permission to land should be made the same. It is problematic that people who have obtained visas still need to seek another ‘permission to land’ which by law can be denied. Based on this, there is a loophole where people are treated differently depending on their nationality.

There has to be a way through which peoples’ visas should be electronically verified at the ports of entry so that visas already issued can be easily identified. Issued visas do have
numbers which can be crosschecked electronically, border officials ought to verify the visa numbers to crosscheck whether they have originated from the proper issuing authority. Such numbers should give a clue to the other information about the one whose identity corresponds to the information stored.

For example, the EU countries in the last few years have upgraded their visa system. In March 2010, Ireland followed some other EU embassies in upgrading to electronic visa (e-visa) applications in their embassy, in Abuja Nigeria; through this sort of application biometric data of visa applicants are taken.\(^{615}\) Such technological advances suggest that states can protect themselves from fraudulent visa practices and rely on those visas which they themselves have issued via embassies.

### 6.3.4 Opening up channels for legal migration (both skilled and unskilled)

There is the tendency to expand legal migration for skilled workers only, while neglecting the fact that preventing low skilled and unskilled migrants from entry could cause an increase in illegal migration and illegal employment.\(^{616}\) Opening these channels by no means would entail taking the jobs of citizens, because they will only take jobs that are available. Citizens have a right to be employed in their states and in a consequentialist cosmopolitan understanding nothing should take such a right away from them. However, immigrants should be given the opportunity to take available jobs without too many restrictions as this

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\(^{615}\) In the EU level, biometrics information of visa applicants are stored in the Visa Information System (VIS), while in the UK since the beginning of 2008 finger prints of all visa applicants have been taken worldwide, though the finger prints checks started in 2007 for all visa applicants from Nigeria. For Nigerian visa applicant to Ireland, biometric data supports visa applications lodged in Nigeria; information from this data can be checked on entry with *Automatic Fingerprint Information System* (AFIS) as a deterrent to fraudulent applications and helps in detecting the identity of people. Though INIS only uses that for visa applicants from Nigeria, it hopes to extend it to some other identified countries like Pakistan (Emma Quinn, *Visa Policy as Migration Channel: Ireland*, 19 and 32).

\(^{616}\) *International Migration Outlook*, SOPEMI 2009, Special Focus: Managing Migration beyond Crisis, OECD, p.12.
would maximise their capacity to choose better life options which is the ultimate ethical goal.\textsuperscript{617}

The EU ‘Acquis’\textsuperscript{618} addresses the immigration of skilled workers but has no harmonized migration programme for unskilled and low skilled workers.\textsuperscript{619} It has to be said that any form of legal immigration that is not also opened up to unskilled workers will still fail to reduce illegal migration, because it is unskilled workers who are more susceptible to becoming illegals than the skilled.\textsuperscript{620}

On the other hand, ‘illegal immigration’ has been a response to the demand of the developed nations’ labour markets for cheap, unqualified labour that is not met by the domestic workforce for several reasons.\textsuperscript{621} If legal channels of entry are broadened, with people having the opportunity of legally crossing the borders, there undoubtedly will be less incentive for people, including asylum seekers who \textit{de facto} are not asylum seekers, to come into a country without proper documentation.\textsuperscript{622}

Legal migration for low-skilled jobs should be opened up because it is mostly the low-skilled who feed illegal migration. There are sectors known to employ low-skilled workers, like carers, construction industry, domestic workers, hospitality and caring, food processing.\textsuperscript{623} In a new migration regime, the EU can distinguish between long term employment and temporary employment, the general procedures that include ‘labour market tests’ and

\textsuperscript{617} Marchetti, “Consequentialist Cosmopolitanism and Global Political agency,” 59
\textsuperscript{620} Hatton and Williamson, \textit{Global Migration and the World Economy}, 389-390.
\textsuperscript{621} Straubhaar, “Why do we need a General Agreement on Movements of People (GAMP)?,” 129.
\textsuperscript{622} Hayter, \textit{Open Border}, xii.
\textsuperscript{623} Bertozzi, ed., \textit{Opening Europe’s Doors to Unskilled and Low-skilled workers}, 8
submission of various documents may not be necessary for temporary workers, but may be justified for long term workers.\textsuperscript{624}

Opening borders for both skilled and unskilled immigrants would in the long run facilitate “brain circulation”,\textsuperscript{625} as migrants would not be fearful of being given access to re-enter if they go home. On the other hand, the skilled people alone will not be the only target of immigration, which would likely lead to “brain drain” in the sending countries.\textsuperscript{626} Rather, unskilled people can equally move out of their homeland if they find jobs elsewhere in the EU.

Most TCN migrants are concerned that if they leave the EU and go back home, they will find it hard to obtain visas to return. EU countries seriously need to encourage ‘circular migration’ by creating avenues for migrants to enter, leave and re-enter.\textsuperscript{627} As Kofi Annan once said, the “silent human rights crisis” at the EU borders caused by the EU immigration system shames the world. He then goes on to say;

\begin{quote}
I would therefore encourage European States to open up greater avenues for legal migration – for skilled and unskilled workers, for family reunification and economic improvement, for temporary and permanent immigrants.\textsuperscript{628}
\end{quote}

In this address, he shows “the vast majority of migrants are industrious, courageous, and determined. They do not want a free ride. They want a fair opportunity.”\textsuperscript{629} In this light, all\textsuperscript{624} Ibid.,111.

\textsuperscript{625} Brain circulation can be understood to mean a circular movement of skilled labour across international borders. People can move to where there is labour demand and still go back home at a different time to contribute to the development of their home countries.

\textsuperscript{626} This is understood to be a situation where the skilled people emigrate to other countries where they hope to be paid better, thereby creating a vacuum in their home countries.

\textsuperscript{627} See, Communication, “On Circular Migration and Mobility Partnerships Between the EU and Third Countries, COM (2007) 248 final,” Brussels: CEC.


\textsuperscript{629} Ibid.
migrants should not be viewed as "criminals" and "terrorists" because the vast majority are ready to abide by the rules of the host European countries.630

The EU has to harmonise and simplify the procedures that allow TCNs access to the labour market. This would include; abolishing the labour market test necessary for the recruitment of TCNs; abolishing the requirement of residence or work permits for job seekers; and the issuance of visas should double as an authorization to enter the labour market.631 To make it easier, any form of valid visa, including temporary visas, should give TCNs access to the labour market if they find employers. TCNs can work on the basis of their short term visa if they find work, bearing in mind that the temporary visas are only temporary and can be renewed.

6.3.5 Integration: Facilitating pathways to long stays or ‘citizenship’

Immigration and integration are supposed to be “two sides of the same coin”; the former involving the entry of immigrants while the latter concerns what happens to them when they stay.632 A new regime that allows more legal immigration of people will have to do more than the present regime to enable the integration of migrants. Consequentialist cosmopolitanism is distinguished from any other theory by the fact that it identifies freedom of choice as a metric of wellbeing.633 What makes the individual immigrant generally better off is determined by the capacity to make a choice concerning where to reside and whether to become a citizen.

630 Ibid.
631 Bertozzi, ed., Opening Europe’s Doors to Unskilled and Low-skilled workers, 111.
632 Howard, “Politics of Immigration and Citizenship in Europe”, 238.
633 Marchetti, 40
If migrants opt to acquire ‘citizenship,’ this has to be made possible if they do not constitute a nuisance to those who already are members.\textsuperscript{634} Citizenship carries a “set of legal entitlements allowing for freedom of choice and full membership of the political community.”\textsuperscript{635} Third Country Nationals who wish to become citizens and are qualified to do so should not be made to wait for a long time. If they have worked and paid taxes, and therefore are qualified, care should be taken to make it easy for them to gain citizenship.

There is no doubt that many countries in the world are now more ethnically or racially heterogeneous because the contemporary world has been built by people from all races and nationalities. Naturalization has always been there in history and it is a trend that cannot be stopped. Even those who call themselves the real citizens may have come from somewhere else, or may have foreign ancestry in their genealogy, if we unpack their circumstances in history.

In granting citizenship, the only morally acceptable determinant factor would be the length of stay. Presently, many countries have different lengths, which involves several years of “legal residence,”\textsuperscript{636} which is often interpreted differently. In this interpretation, the informal years spent in a country do not count on the road to citizenship. The interpretation of ‘legal residence’ has to be broadened to accommodate the ‘un-reckonable years’ in the path to naturalization. For example, students who have lived in a country for up to five years, working and paying taxes deserve a consideration on the ground that they have been contributive to the state through the fees they have paid and different forms of taxation.

\textsuperscript{634} See, Chapter 3.4.3 “Consequentialist cosmopolitan arguments regarding border arrangements.”
\textsuperscript{635} Marchetti “Right to Universal Mobility: A Consequentialist Cosmopolitan Reading”, \textit{Ethics and Economics}, 4 (1), 2006
\textsuperscript{636} Sales, \textit{Understanding Immigration and Refugee Policy}, 237.
6.3.6 Broadening the concept of ‘Refugees’

The UN definition of refugees was originally meant to liberate those who were trapped in the communist regimes; one can say that this has been successful in encouraging people to flee tyrannical and despotic governments. As the Cold War has ended, the world is facing not only political challenges but also economic challenges. In the Third World, poverty, destitution, climate change and also political upheavals or bad governance have all combined to create more displacements.

As such, there is migration of people from the Third World to the developed states where they feel there are more life options. In this understanding, people who are in dire need of survival have to be seen as “refugees” whether they are economic or political refugees. It is unsatisfactory that the present vocabulary of ‘refugee’ has often come to be understood as qualified by the term 'bogus' and developed nations are closing the asylum gates through tight border controls.

In the present world order, the ability to enter a country and remain freely and to work may be the most important rights for refugees.637 As Rosemary Sales points out, if these classes of people have the ‘right’ or the opportunity to travel legally to countries of their choice, it obviously will remove the “dangers of clandestine entry.”638 It will remove the “insecurity caused by the fear of detention and return”639 and also the “the stigmatization of being segregated in a punitive system while their application is processed.”640

A consequentialist cosmopolitan approach indubitably will end the process of immigration detention for those considered illegal migrants since they will have the opportunity to choose their destination if their homeland does not offer them life opportunities. The present

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637 Ibid., 233.
638 Ibid.
639 Ibid.
640 Ibid.
immigration regime detains illegal immigrants and such detention is outside the normal judicial process as people are detained without trials and without committing a crime. A moderately open border regime will not make use of “guards and guns” against people fleeing, whether they are considered ‘genuine’ refugees or economic migrants. Such a border regime will deter people from embellishing their life stories to suit border officials thereby claiming what they are not. It will also reduce the cost of manpower and resources that are used to maintain the present refugee and asylum system.

A more open immigration regime will undoubtedly minimize the burden of asylum seekers on natives who pay taxes, as asylum seekers numbers will be reduced drastically if there are other alternative immigration statuses. The period of wait which asylum seekers stay unarguably will be minimized, and this will be important to them as well as their children, as delays in settlement have long term detrimental effects on these children while their parents are in ‘limbo’. A more open immigration will encourage those unable to find work either to go home or find other alternatives to earn a living, without being a burden to the state.

6.3.7 Amnesties and Earned Regularisation for those already trapped

Rather than concentrating much on the control of borders the EU should rather consider how best to deal with the inevitable consequences of immigration of people. They can be more prepared to deal with the consequences rather than concentrating so much on fortifying borders against TCNs. As some suggest, one of the ways to deal with the consequences of the inability to stop illegal immigration is by expanding “the amount of legal migration and

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641 Ibid., 232-33.
642 Carens, “Aliens and Citizens,”
643 Sales, Understanding Immigration and Refugee Policy, 233.
quietly accept illegal, (unauthorized or undocumented) migration." Beyond accepting a degree of illegal migration it would be wise for EU states to allow illegals to integrate gradually.

Through “earned regularization” (ERS), undocumented migrants can earn temporary and/or permanent residency rights in the state over a specified number of years. This concept of regularization could be seen as an “amnesty”; however amnesty is different from earned regularization which is solely based on migrant’s length of time, or employment in the state. A moderately open border regime undeniably will bring an end the plight of so many who have lost their individual freedom and their capacity to make a choice as human persons due to their being undocumented.

In making these policy recommendations, intended to introduce more fairness at the EU borders for TCN travellers, it is equally important to remember that a consequentialist cosmopolitan approach also entails protecting the interests of members and their right of associative ownership. For example, welfare and pension schemes have to be made inaccessible for those who do not qualify or are not eligible; otherwise too many immigrants queuing for welfare might crash the social welfare as already acknowledged. However, the billions of money spent on border security and asylum system can be used to fortify the welfare and the health sectors to accommodate more people. In this way, the valued

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645 Ibid.; Also in the case of U.S., Alan Sykes has argued that there is need for a policy that allows more legal migration, such a policy would not just “ameliorate labour market inefficiencies” which is caused by existing immigration clampdowns, but such policy would reduce the demands for the services of illegal migrants. Not just that, such policy would “facilitate a significant reduction in the enforcement resources devoted to the perceived problem of illegal immigration” (Alan O. Sykes, “Welfare Economics of immigration Law: A Theoretical survey with an Analysis of U.S. policy” in Justice in Immigration, ed. Warren F. Schwarz, Cambridge University press, 1995, p.194).

646 For example, in the last year, this scheme has gained a lot of support though it is yet to be taken seriously. On Monday, the 6th of December 2011, the Dublin City Council unanimously passed a motion to support the introduction for an ‘Earned Regularization Scheme’; this is in favour of the undocumented immigrants living in the state.

647 Donald Kerwin and Laureen Laglagaron, Structuring and Implementing an Immigrant and Legalization program: Registration the First Step (Washington: Migration Policy Institute December 2010).

648 See Chapter 2, “Welfare argument”
institutions of EU states can be saved from the dangers which immigration sceptics have consistently stressed.
FINAL CONCLUSION

This research finding has shown how present EU border regime highly restricts the entry of third country nationals from the developing world by using various tools to selectively control their movement into and within the EU countries. Current immigration policies are crafted so as to restrict many people from entry and at the same time put them under surveillance once they have crossed the borders. As chapter two argued this is a practice that is justified based on the ethics of ‘particularism’ where immigration restriction serves as a means of primarily protecting the interests of those who are “members” in the EU. The key arguments underpinning restrictive immigration policy revolve around the existence of special obligations to 'members' and the protection of the values of the liberal democratic states; namely welfare, economy, democracy, civil rights and culture.

However, cosmopolitanism fundamentally disagrees with the particularists’ premise that moral obligations are bounded, arguing instead there are moral obligations owed to humanity in general. This means that EU’s ethical obligation extends beyond its established borders, their moral obligation is extended to those seeking admission at the EU borders and those who have gained admission who are eager to become members.

Weighing up the contending claims of these two ethical poles, this thesis has argued that while particularism is problematic in its ethical privileging of 'members' and its impact on TCNs, outright cosmopolitanism is not attentive enough to the consequences totally open migration might have on the socio-political projects created collectively by members of nation-states. Therefore the thesis advocates consequentialist cosmopolitanism which offers an ethical framework to reconcile particularist and cosmopolitan arguments by showing that there are simultaneously good reasons to open the borders but at the same time there are good
reasons to have some degree of restrictions. This means that while there is need to admit immigrants the interests of those who are natives cannot be neglected.

At the heart of this thesis was an analysis of the existing EU border regime in general and the Irish regime in particular by the criteria of consequentialist cosmopolitanism. To make this analysis research was conducted among migrants and would be migrants from South East Nigeria. As shown in the interviewees’ experiences, EU border policies selectively restrict the movement of TCNs. The findings have shown that EU border regime discriminate against some people on the ground they are third country nationals, because they are profiled and treated with a different standard while they seek admission.

The selectiveness in relation to third country nationals is also felt when migrants are categorized and put under surveillance even after crossing the borders. In the findings, participants felt their human rights are violated at the borders as they are selectively treated as people who have ‘no right of entry’ and even more poignantly those who because of present restrictive borders travel illegally or become undocumented become vulnerable to having their human rights violated. The migrants' experiences, when taken together, make a compelling critique of the current EU border regime.

However, in the light of consequentialist cosmopolitanism, which also recognises the importance of the state as sovereign, it can equally be argued that the EU is morally right to control its borders as failure to do so could be catastrophic for the welfare and security of those who are members. The EU has a special duty to care for its citizens and provide the guarantees and rights that equally will enhance their life choices and human well-being which is the goal of consequentialist cosmopolitanism. Yet, doing this does not imply that the EU’s duty only ends with those who are members; such duty has to be extended to others on the basis of common humanity.
Consequentialist cosmopolitanism offers an ethical framework to create a balance between these competing concerns by recognizing the interests of both migrants and natives whose well-being are all important. A consequentialist cosmopolitan approach to borders rightly would advocate for the wellbeing of TCNs who are selectively treated as much as it would advocate for all other migrants and citizens. It identifies *freedom of choice* as a metric of well-being whereby each individual possess the ability to choose by themselves. The individuals’ capacity for choice indirectly becomes the indicator of wellbeing, such capacity for choice will enable every human being including migrants to choose between different life options.

A proposal to apply consequentialist cosmopolitanism on present restrictive EU immigration regime rest on the idea of individual freedom where individuals are left to choose what is good for them. Their capability to freely choose is fundamentally valued because such capability leads to their well-being and equally to the “maximization of world welfare.” The EU states can show more responsibility by not being highly selective in the way migrants are given admission. It can allow borders that are *moderately open for everyone* as is already practiced among EU states.

Consequentialist cosmopolitanism offers something more concrete for the revision of the present EU regime. A consequentialist cosmopolitan approach would approve of border policies that allow admission of immigrants without neglecting the rights of natives to control immigration. Some practical suggestions, which would need further research before implementation, have been offered on how present border arrangements can be made to be more cosmopolitan in a moderately open border regime.
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251
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252


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256
APPENDIX 1

LIST OF PARTICIPANTS, DATES AND PLACE OF INTERVIEWS

Interviews for Chapter Four

Period of Fieldwork: May 2011-August 2011

<table>
<thead>
<tr>
<th>PSEUDONYM</th>
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<td>Awka Anambra</td>
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<td>Anii</td>
<td>26&lt;sup&gt;th&lt;/sup&gt; June</td>
<td>(Phone interview)</td>
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<td>Anyi</td>
<td>12&lt;sup&gt;th&lt;/sup&gt; August</td>
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Judith 8th August Owerri Imo State
Ken 20th/24th May (Via Skype and Phone)
Mama Beni 27th July Abakaliki- Ebonyi State
Mama Enda 30th August Amaifeke, Orlu Imo state
Marcel 27th August Nsukka, Enugu State
Max 20th July Lagos, Lagos State
Melum 26th June (Phone interview)
Ndaa Phili 26th July Udi Enugu State
Oguji 21st July Lagos, Lagos State
Okanu 4th August Nnewi, Anambra State
Olisa 12th August Enugu, Enugu State
Oluchi 10th August Ihiala, Anambra State
Tochi 13th July Asaba, Delta State
Uzochi 12th August Awka Anambra
Valentine 21st July Lagos, Lagos State

**Interviews for Chapter Five**

**Period of Fieldwork: September 2011-June 2012**

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APPENDIX 2

Interview Schedules for Semi-Structured Interviews

Questions for those seeking to migrate/or those with experiences of migration

N.B. The route through this interview schedule varied depending on the experiences of the interviewees. All were asked the personal background questions and questions about their reasons for migrating (Q1-5) but thereafter the questions discussed depended on their migratory journeys.

1. Where were you born?
2. Can you say something about your family background?
3. Why did you decide that you wanted to migrate to a foreign land?
4. Did any of your family members or friends inspire your decision to migrate to a foreign land?
5. How were you sure that your life would be better there?

Visa Applicants

6. What was your personal experience at the Consulate or Embassy where you first went for your visa?
7. Did you go through any middleman or agent?
8. How many weeks or months were you told to wait for a response to your application?
9. What was the attitude of the consulate officers to you? Were they rude or kind?
10. How long did you wait before you were attended to?
11. Were you given an appointment prior to arrival? Was it hard to get an appointment?
12. Were the requirements you needed to secure a visa clear to you?
13. Were you able to provide them?
14. From your experience, do you think other people are able to provide the visa requirements from the European Consulates/Embassies?
15. Do you think the requirements needed are excessive or not?
16. Did you give them any fake document in your bid to secure a visa?
17. Do you think the documents you submitted and the information you gave were satisfactory for your visa to be approved?
18. If your application was denied, why do you think it was denied?

19. Were you given any clear reason why it was denied?

**Irregular Migrants**

20. What made you think of taking the route of illegal migration? Was it because of your inability to get visa for legal migration?

21. Are there human smugglers or middlemen in this region who prey on desperate people intending to migrate?

22. Is it possible to get visa to any European country illegally or through middlemen?

23. Were you aware of people who died in their bid to migrate? How did they die?

24. Could anything have been done to prevent their death?

25. Despite the impenetrable barriers erected around the developed nations, are you still ready to risk your life to evade the barriers?

**Border Crossing**

26. What were your experiences at the physical border(s) crossings?

27. How did you feel being treated differently at the border because of the country of your origin?

**Migration status and Continuing Surveillance**

28. If you have better options at home would you still opt to migrate?

29. How often do you travel out of the country while being resident in Ireland? What are your experiences when you go out and come into the country?

30. How did your immigration status affect you in your jobs?

31. How often did you renew your Garda Card?

32. What are the difficulties you encountered while going for renewal?

33. Did your immigration status affect you in getting a job?

34. How often have you had your immigration status checked?

35. Do you have a family here in the country? Did you apply for family reunification?

36. What are the experiences of your family members while living in the Country?
37. **Questions for those in category 3 (Chapter 4)**

1. For what reasons do you think people migrate?

2. Do you think there are many people in your local community in search of opportunities to migrate?

3. What are people’s reactions towards migration to the developed world?

**Migration and Local Development**

4. Do you think that migration of people to the developed world has led to more development in South Eastern Nigeria?

5. Are successful migrants economically improving their families?

6. To what extent have migrants in the diaspora contributed towards development in towns and villages?

7. Are remittances beneficial to community development? Or do they benefit individuals and family members alone?

8. Is it true that remittances from individual migrants cease or drop with time?

9. What other impact have migrants made on these regions?

10. Has migration in any sense caused more poverty?

**Migration Policies**

11. What do people have to do in order to migrate?

12. Have the poorest people any hope of migrating?

13. Are skilled people the only targets of European immigration policies?

14. Would an open border policy in the EU have a positive impact on your region?