

In response to question 2.



The EU's Selective Open Border Policies Exclude the Global South

Anisa Abeytia* and Jasmin Lilian Diab*
Think Tank Programme on War, Conflict and Global Migration,

The European Union (EU) maintains a two-tiered asylum and immigration legal system that allows for the free movement of European citizens, while holding people in the Global South until their physical or intellectual labor is required in the Global North. This extraction of physical and intellectual labor is a continuation of exploitative, colonial practices and serves to preserve a system that benefits the Global North.

Europe's inability to deploy a coherent migration agenda in 2015 was a veiled effort to prevent asylum seekers from primarily Muslim majority countries from entering Europe. The EU's response to the [2015 refugee flow](#) highlights the discriminatory nature of European immigration and asylum laws. In a bid to bolster national security agendas Europe closed its borders, effectively ending asylum and enforcing their own "[Muslim Ban](#)" by leaving thousands of asylum seekers, mostly from [Middle Eastern](#) countries, stranded in squalid, makeshift camps in [Frontline States \(FLS\)](#). The 2015 migration flow allowed the power balance to shift to member states. The 2020 European Commission's [New Pact on Migration and Asylum](#) strengthens the positions of member states to enact discriminatory laws and practices entrenched in colonial sentiments of European superiority and [deeply rooted Islamophobia](#), while abandoning a commitment to international law and human rights.

Member states like Hungary and Poland used language couched in xenophobic rhetoric to justify their nations' refusal to implement EU asylum policy. The populous movements that later emerged were a reaction to the 2015 increase of asylum seekers from Muslim countries is rooted in deep, historic animosities ([Prpic](#) 2018, [Benoist](#) 2018 [Radjenovic](#) 2016).

Several European countries also attempted to force conformity to perceived European cultural "norms" by altering Muslim refugees' behavior through legislative measures, by regulating female

dress (France, Denmark, Austria, Belgium, the Netherlands) meat processing (Belgium, Denmark) and non-consensual physical contact between genders to receive citizenship (Denmark). Recently, human rights groups called on the United Nations (UN) to investigate France for their systematic entrenched Islamophobia ([Gjevori 2021](#)).

Europe continues to adopt legal systems intended to prevent asylum seekers and [“economic”](#) migrants from the Global South from entering Europe. This system serves as a deterrent and places migrants from formally colonized regions into precarious legal situations reminiscent of the punitive legal codes that prevented slaves from escaping or Colonial subjects from [“rebellious”](#). These systems serve as tools for weaponizing historic trauma shared across generations, as an approach that continues to shackle and terrorize vulnerable populations into submission, and to hold these populations in the south until their labor is required to tend to a dwindling and aging European population.

Recent trends in South-North migration are increasingly selective and dependent on [“individual initiative”](#) in contrast with previous decades, when this was almost exclusively based on bilateral agreements between states, and was organized on a collective basis. Though the flows are now more open, they are also shaped by determining factors linked to a migrant’s skills, characteristics, as well as the specificities needed in the receiving countries’ labor markets. Unlike more evident forms of exclusion, such as the aforementioned Muslim Ban, a number of discriminatory policies instill indirect forms of discrimination (along with more evident ones) that are implemented by governments in response to [anti-immigrant pressures](#). While migration policies become increasingly dependent on whether or not the migrant profiles match the specific demands of the receiving country, problematic features of the EU, which essentially limit mobility and discourage many potential migrants from moving abroad need to be addressed and reassessed.

It will take a collective rethinking and restructuring of the legal systems locally, nationally, and internationally to undo the asymmetrical balance of power the Global North has established across centuries. While international migration and refugee law remains rooted in post-Colonial understandings and a post-WWII approach to what “asylum” and “refugee” means, it will continue to be reflected in every aspect of our societies and be amplified by the language of our discriminatory legal frameworks and migration policies. The United Nations should facilitate a forum to address the truths that 1) colonial structures created the environments in the Global South that caused the hemorrhaging of refugees, in order for, 2) the EU to establish asylum and economic migration policies as reparations for the past and continued exploitation of the Global South by European countries.

In response to question 3.



US Immigration Policies' Historical Exclusionary Practices Towards Immigrants from the Global South

Anisa Abeytia* and Jasmin Lilian Diab*
Think Tank Programme on War, Conflict and Global Migration

The Trump Administration's three iterations of Executive Order No. 13769, Protecting the Nation From Foreign Terrorist Entry Into the United States, the "[Muslim Ban](#)," and the "[zero tolerance](#)" family separation policy, are continuations of the country's long standing history of [human rights violations and discrimination](#) in their asylum and immigration policies. These human rights violations stem from Congress' massive plenary powers over immigration laws that are racially motivated. Congress continues to favor immigration legislation more in sync with the [Monroe Doctrine](#) (1823) and [Manifest Destiny](#) (1845), than with an international standard of human rights, which gives context to [consistent](#) US immigration policy that remains unsympathetic to immigration from the Global South, regardless of the political party in office.

[Under Trump](#), the US border witnessed an expansion of the family separation and detention policies and an unbroken trajectory in the US immigration system that [criminalizes asylum seekers and immigrants](#). The "Muslim Ban" is one such policy that emerged not only from current policy trends, but from a [long standing history](#) of exclusionary practices towards immigrants and asylum seekers. The [Indian Removal Act \(1830\)](#), the [Chinese Exclusion Act \(1882\)](#), [Jim Crow laws](#) established in the 1890s, ["Operation Wetback" \(1953-1954\)](#), and [Japanese American Internment \(1942-1945\)](#) are the foundation of Trump's immigration policies focused on race.

The dominant narrative surrounding the racial and ethnic composition of the US population is problematic and rooted in the US founding [myth of whiteness](#), and an entitlement granted by a Colonial legacy to dominate and subjugate the populations of the Global South. The xenophobic reaction of the Republican party to immigrants and their support of Trump's immigration policies reflects a legislative goal stemming from white supremacy and driven by Congressional mandate.

A “white-only” America never existed; from its inception, the US had a [substantial native population](#), followed by the importation of [African slave labor](#). In the 1800s, [Chinese laborers](#) were attracted to the US by the lure of jobs. In response, [Yellow Laws](#) were enacted to keep America white and forbade the granting of citizenship to non-whites. The signing of the [Treaty of Guadalupe Hidalgo](#) (1848), after US annexation of parts of Mexico, triggered a legal classification of “whiteness” given to Mexicans to circumvent the white-only citizen clause.

More recent waves of migration continued [“blurring”](#) racial and ethnic divisions that segregate immigrant groups into preferred or [“racialized”](#) as disadvantaged brown, Arab and black minorities through immigration policies and [exclusionary/racist political rhetoric](#). However, the recent wave of hate inspired violence against [Asian Americans](#) highlights the ease in which “model” immigrant status can be revoked and returned to brutalization. Additionally, bureaucratically, Arabs inherited [“legal whiteness,”](#) but without privilege.

The US election cycle produces a wait-and-see attitude not only for Americans who support fairer immigration laws, but also people in the Global South anticipating immigration and asylum relief with a change in administrations’ immigration policies - but these are often inherited with minor changes. Such is the case in the transition from the Trump to Biden administration. While Biden did in fact [order a review of asylum processing](#) at the US-Mexico border in order to undo some of Trump’s hardline policies, the executive orders called for a review and reports that may or may not trigger policy changes in the coming year. They ultimately provide [limited immediate relief](#) to immigrants barred by Trump-era rules.

Congressional plenary powers preserve a deeper policy objective that keeps America white. These actions are in gross violation of the [Declaration of Human Rights](#) and the [Geneva Conventions](#). The United Nations should hold the US accountable for these legal practices that favor whiteness by employing [brutal tactics](#) at the US border to discourage populations from the Global South from seeking asylum. In order to correct these violations, which are firmly rooted in Colonialist approaches, we urge the US to provide asylum to the children and families who were [separated](#) and terrorized, as reparations for a legal legacy designed to discriminate against non-white immigrants while exploiting their labor as non-citizens. Without restraint, the power of US immigration agencies will further penetrate into the US interior, [The United States v. Brignoni-Ponce](#), [422 U.S. 266 (1975)], [The United States v. Martinez-Fuentes](#), [428 U.S. 543 (1976)] , [INS v. Lopez-Mendoza](#) [468 U.S. 1032 (1984)] and Congressional plenary power will solidify a segregated legal system of citizens and non-citizens. This effectively institutionalizes racism, not only in violation of the [Fourth and Fifth Amendments](#) of the Constitution, but also of international human rights and asylum laws.

*Anisa Abeytia is the Think Tank Programme Co-ordinator for the Global Research Network

*Jasmin Lilian Diab is a Junior Fellow in the Think Tank Programme on War, Conflict and Global Migration

We (Anisa Abeytia and Jasmin Lilian Diab) give our consent and permission to the OHCHR to publish our submissions.