

A Comparative Study of Refugee Policy & Procedure:

South Africa - USA - EU/Germany - (& Malawi)

Madaline George

US Attorney

Co Founder, Citizen of the World

Summary

Goal - Give an overview of the law, procedure and general refugee policy in the USA and South Africa, and begin a discussion on how factors such as geography and rights come into play. Use this to reflect on the situation in EU / Germany.

1: SOUTH AFRICA — Great on paper, Bad in practice

2: THE UNITED STATES — Resettlement Country / Limited Law → ‘okay’ in practice

3: EU / GERMANY — Multi-national system; Complicated & often limited *refugee* law → ‘okay’ in practice

[The 4th Situation — PROTRACTED REFUGEE SITUATIONS (e.g. Malawi)]



The International Standard

The 1951 Refugee Convention

Article 1:

Definition

Articles 2 - 33 = rights

Definition: “A person who owing to
a well-founded fear
of being persecuted

for reasons of race, religion, nationality, membership of a particular
social group or political opinion,
is outside the country of his nationality
and is unable or, owing to such fear, is unwilling to avail himself of
the protection of that country..”

Rights:

- * Right to non-refoulement (forced return) where his life or freedom would be threatened on account of one of the protected categories
- * Freedom of movement
- * Liberty & security of the person
- * Education
- * Access to justice
- * Employment

But - although there is an international standard - each state sets their own law & procedure

Some regions (AU, EU) have made an effort to adopt uniform regional policies

= **Similar basic definitions** - huge diversity in application & protections offered

Protracted Refugee Situation / Camps

2/3 of the global refugee population – over 10 million refugees – live in protracted refugee situations in 30 countries.

Average stay in a refugee camp is 17 years

Increased risks and often denied rights - freedom of movement, access to land & access to legal employment

Reliance on aid for basic needs - shelter, food, water, healthcare

→ Less than 1% get the chance to leave and resettle elsewhere

E.g. Malawi

South Africa

Legal Definition:

- Persecution based on a protected category (includes gender & LGBT)

AND

- based on general events resulting in public disorder

Rights / Assistance: Work & Study immediately; Freedom of Movement / largely urban populations; little if any state assistance

Where: apply within country

Geographic factor: loose borders; regional proximity to protracted conflict and economic strife

Who: Those fleeing violence and persecution AND those seeking economic opportunity

Outcome: Overloaded system → violations of justice, corruption, inefficiencies, inconsistencies, xenophobia

Yearly Asylum Seekers in South Africa

Year	Asylum Seekers
1998	11,135
1999	31,592
2000	12,226
2001	16,325
2002	24,187
2003	41,741
2004	41,389
2005	43,289
2006	53,361
2007	45,637
2008	207,206
2009	341,602
2010	124,336
2011	106,904
2012	61,500
2013	70,010
2014	71,914

2006-2011 - South Africa was the world's top recipient of asylum seekers

2015:

- 65,000 refugees living in the country
- 295,000 asylum seekers
- Unknown number of 'undocumented' foreigners

90% rejected

USA

Legal Definition: Persecution based on protected categories (includes gender and LGBT)

How/where:

(1) resettled as a refugee from outside;

(2) apply for asylum at the border or from within the country

Geographic impact: largely isolated geographic location; strict borders; protracted violence to the south & Mexican policy influence

Rights & Assistance: Urban integration; right to work (eventually); refugees get some NGO assistance but limited - asylum seekers less

Who: refugees based on #s set each year by government; At the border = mostly from the 'Central American Triangle' - large numbers of unaccompanied children

USA - Refugee Resettlement Process

Step 1 - Flee to Camp

REMEMBER:
Only 1% of those
in camps have
the chance to
resettle

Step 2 - UNHCR determines status

....

Step 3 - Referred to US resettlement agencies

Priorities set by
US government;
vulnerable
groups, women &
children, family

Step 4 - Vetted by USA abroad

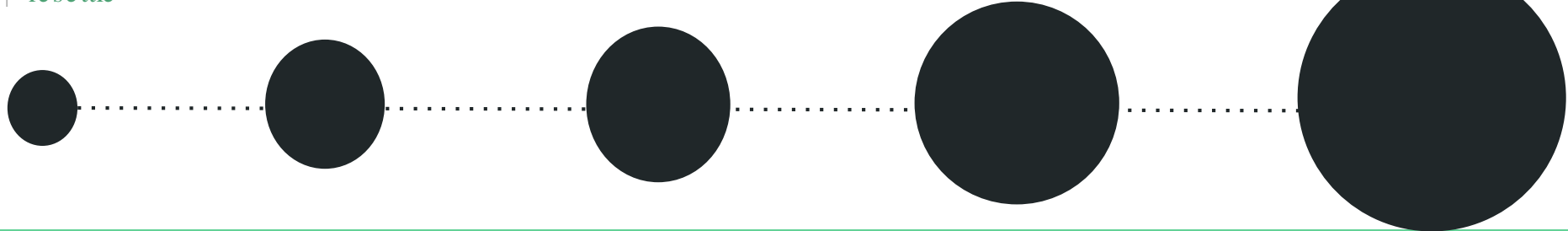
18-24 months+
Extensive
background checks.
Medical exams etc.

Step 5 - Transport to USA

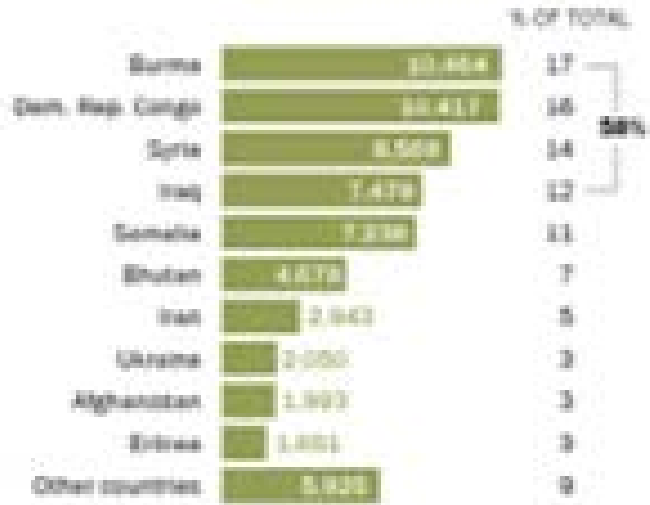
To specific place, but then
can move

Expected to become
financially independent

Some assistance
(language, job training)



USA - Who are the refugees?



Note: Share of U.S. refugees from the four leading origin countries computed prior to rounding. Data do not include special immigrant visas and certain humanitarian parole entrants.

Source: U.S. State Department's Refugee Processing Center, accessed Aug. 15, 2016.

US President, with Congress, sets limits with regional caps:

2016 = 85,000 total refugees

10,000 Syrians

34,000 Near East and South Asia

13,000 from East

25,000 from Africa

3,000 from Latin America and the Caribbean

4,000 from Europe and Central Asia.

USA - Asylum Process

Total Asylees		
Country	Number	Percent
China, PRC	8,604	34.1
Egypt	3,407	13.5
Ethiopia	893	3.5
Nepal	854	3.4
Syria	811	3.2
Venezuela	687	2.7
Iran	675	2.7
Russia	534	2.1
Haiti	496	2.0
Iraq	462	1.8
All other countries, including unknown	7,776	30.9
Total	25,199	100.0

Central American Triangle - El Salvador, Guatemala, Honduras

- Most dangerous place in the world outside of active war zones

At the border:

- 2014 = 69,000 unaccompanied minors
- First half of 2016 = 48,000
- 60% have experiences that make them eligible to relief from deportation

Border Militarization

Programa Frontera Sur (2014) - Deal with Mexico to limit migration

26% success rate at the border with representation

1.5% success rate at the border *without* representation

EU / Germany

EU: attempts to harmonize, set minimum standards; but each member has their own law & procedure

Open internal borders & regional proximity to conflict & economic strife

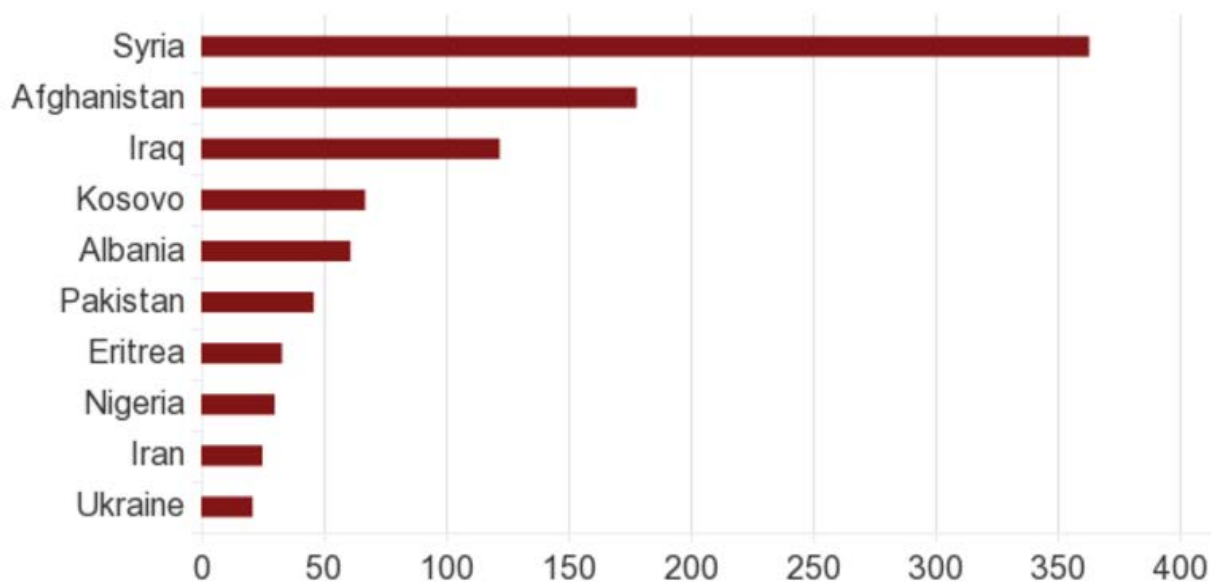
Outcome:

- Confusing and frequently changing system
- Inconsistency in protections offered
- Lack of procedural justice & individualized determinations
- Barriers to effective action by individual countries
- Heavier responsibility placed on some countries

EU / Germany

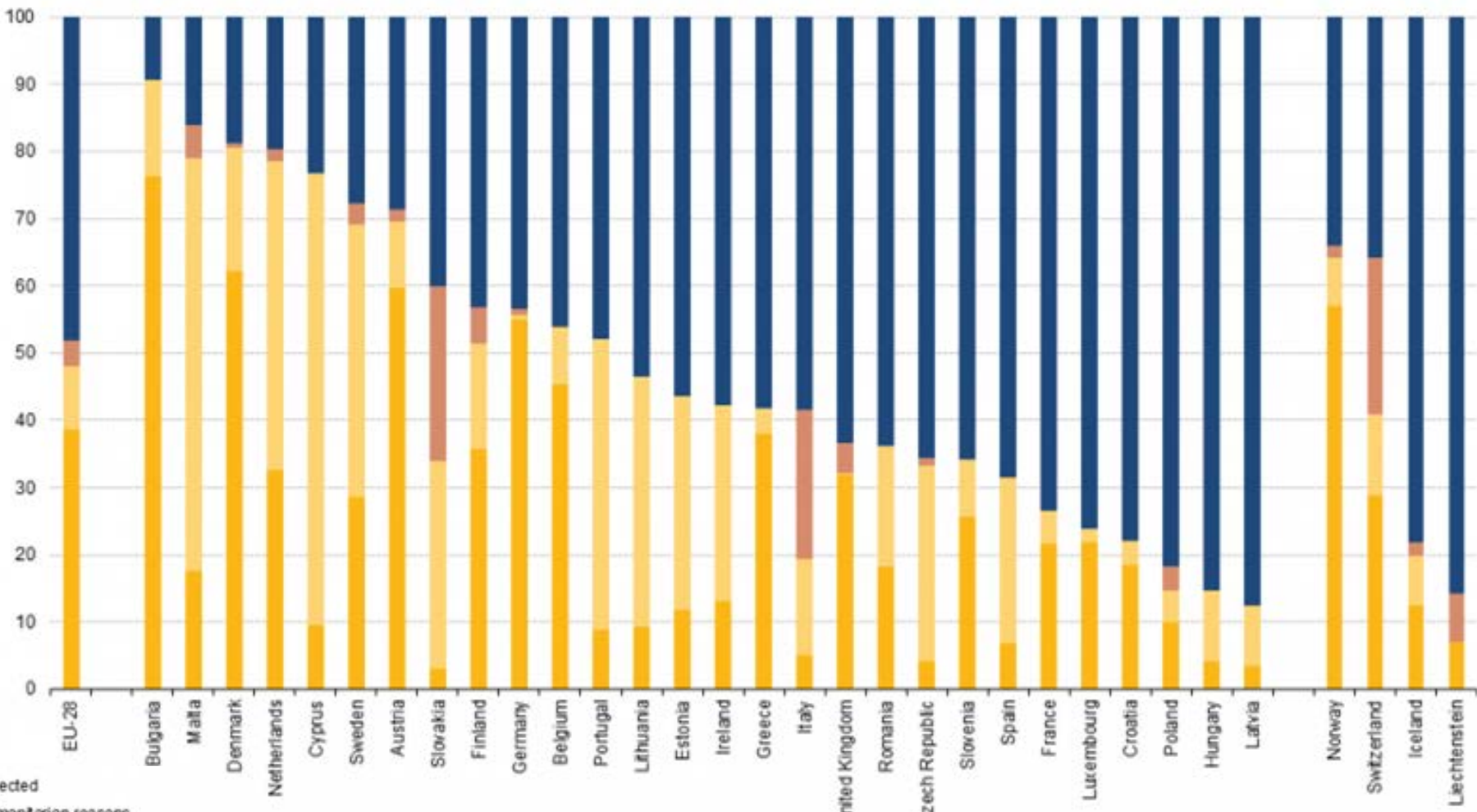
Top 10 origins of people applying for asylum in the EU

First-time applications in 2015, in thousands



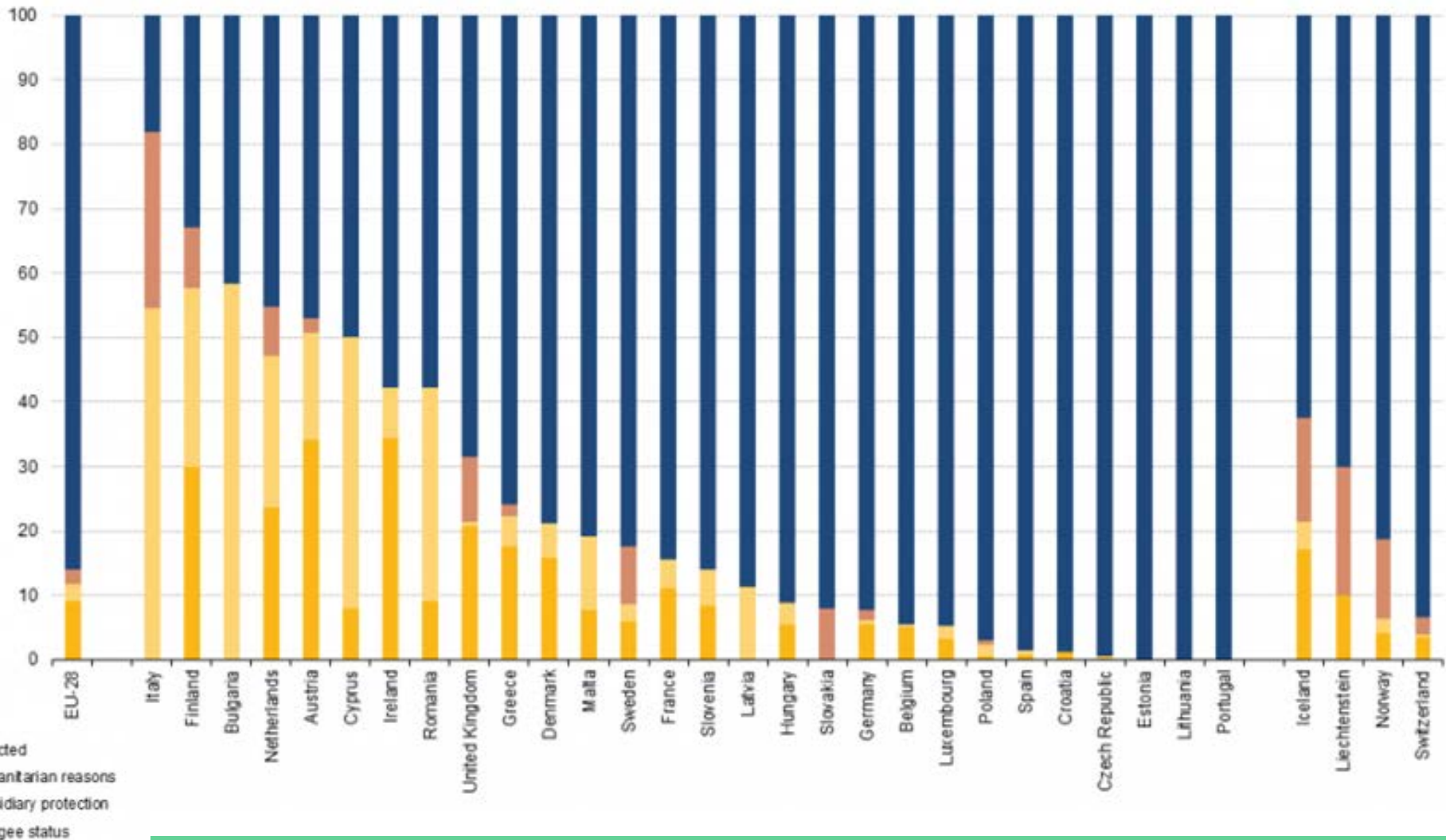
Source: Eurostat

Outcome on First Decisions



- Rejected
- Humanitarian reasons
- Subsidiary protection
- Refugee status

Outcome on Final Decisions

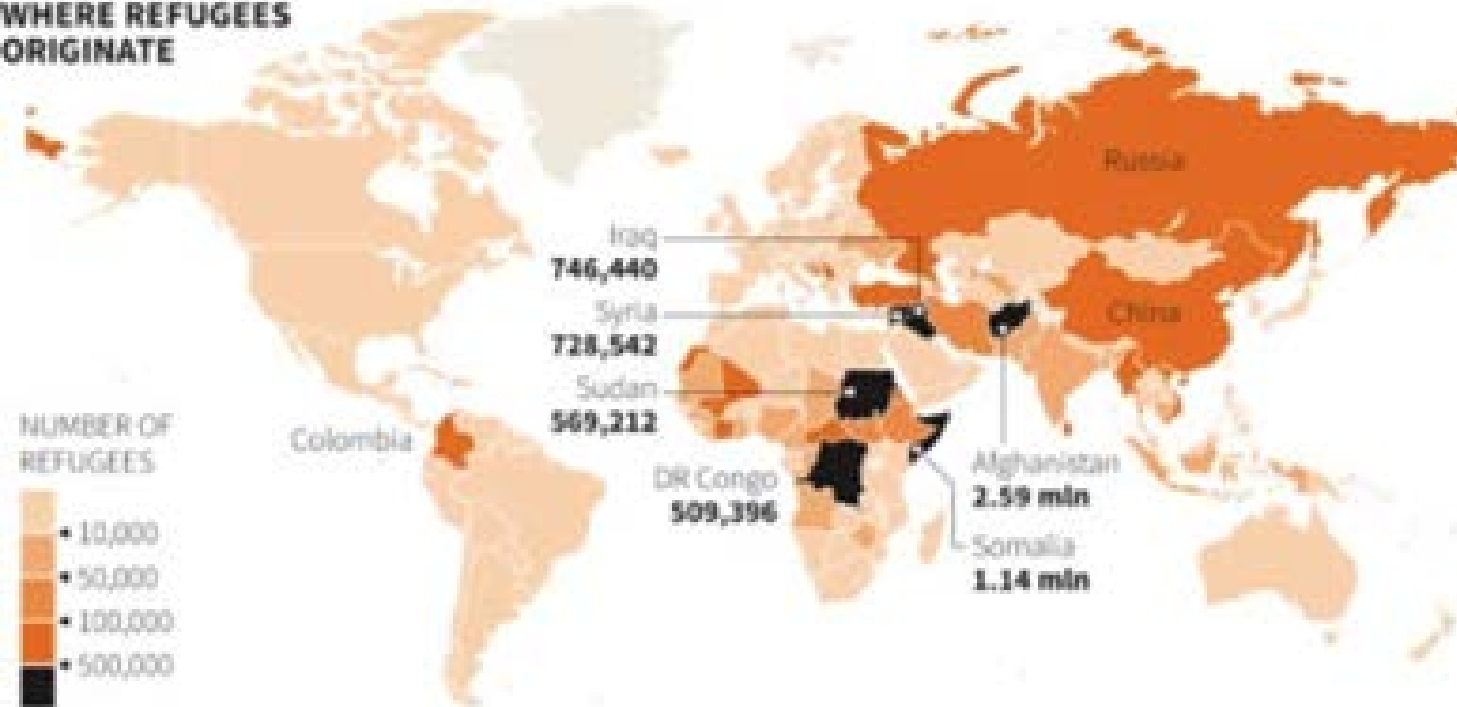


- Rejected
- Humanitarian reasons
- Subsidiary protection
- Refugee status

Most fleeing who qualify for UNHCR protection are from just a small number of countries

2012

WHERE REFUGEES ORIGINATE



Over the past 25 years, the majority are from:

Afghanistan
Iraq,
Syria
Burundi
DRC
Somalia
Sudan
Colombia,
the Caucasus
former Yugoslavia.

10 states host 56% of world's refugees although they account for only 2.5% of global economy

Top countries by number of refugees hosted at the end of 2015



To compare, in 2015 --

DE - 250,000 refugees and 441,900 asylum claims

USA - 267,000 refugees; 172,700 claims

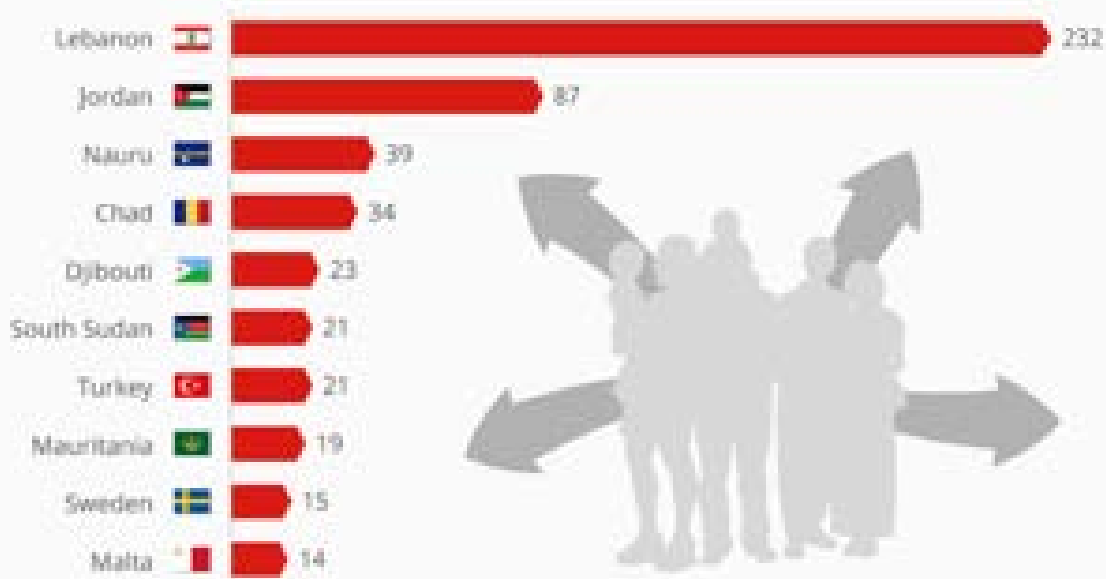
EU - In 2015, 1.32 million total asylum claims



If we compare the population of a country versus the number of refugees they are hosting...

The Countries With The Most Refugees Per Capita

Number of refugees per 1,000 inhabitants in 2014



To compare, in 2015 --

Germany - 3.1 / 1000

USA - 0.84 / 1000

South Africa - 2.2 / 1000

Other things to consider

- (1) **Outdated way of delivering assistance** (camps, aid delivery etc.)
- (2) **Need to look at the potential for development offered by this migration**
- (3) **Necessity of adequate refugee status determinations** (including training & individualized evaluations)
- (4) **Remember that asylum seekers don't usually have *legal* access to safe countries** - cannot criminalize their illegal entry / presence (through detention / deportation etc.)
- (5) **Migration laws globally are very exclusive to those in need of similar protections as refugees** (post-colonial areas, environmental disasters)

Thank you!

Madaline (Maddy) George

maddygeorge89@gmail.com

+49 178 328 7199 (for calls in Germany)

+1978 996 5316 (whatsapp)