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## 2016

### Lex:lead Group annual scholarship competition

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# Lex:lead Group annual scholarship competition

**T**he following articles were winning submissions in the 2016 Lex:Lead Group annual scholarship competition. Winners were decided by a panel of international judges, lawyers and academics, judged independently.

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# The effect and implementation of refugee and migration law vis-à-vis poverty and economic development

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## Introduction

No society can consider its future without factoring in the effects of human mobility.<sup>1</sup> Human mobility or migration is a growing global phenomenon, most countries being simultaneously countries of origin, transit and destination.<sup>2</sup> Conflicts, violence, natural disasters and socio-economic factors, among others, are the root causes of human mobility.<sup>3</sup> Migration continues to increase in scope, complexity and impact.<sup>4</sup> Migration contributes to economic development and poverty reduction.<sup>5</sup> It is, therefore, considered not only as a result of imbalances in development, but also as influencing development.<sup>6</sup> Migrants contribute to economic and human development, hence poverty reduction in their home countries – through their remittances, skills and knowledge – and to the economies of the countries in which they work and live.<sup>7</sup>

It is not surprising that in recent years there has been intense interest in the issue of migration and development.<sup>8</sup> The focus has been on the impact of migration on poverty and economic development. Nevertheless, there has been inadequate attention paid to the relationship between refugee and migration law and poverty and economic development. Recognising that law is a tool for development,<sup>9</sup> it becomes necessary to inquire into the link between refugee and migration law and poverty and economic development. Hence, this essay critically analyses the effect of refugee and migration law on poverty and economic development, and how it can be implemented to alleviate poverty and improve economic development. It is argued in the paper that refugee and migration law, as a development tool, determines how safe, orderly and regular migration is, so that, in turn, it contributes to economic development and poverty

reduction and, therefore, its implementation must also aim at establishing safe, orderly and regular migration.

The essay proceeds to present the theoretical framework informing this study, which will be key in understanding the effects of refugee and migration law and its implementation. Then, the paper will discuss the effect of refugee and migration law on poverty and economic development. Finally, the essay will analyse how refugee and migration law can best be implemented with an aim of reducing poverty and improving economic development.

## Refugee and migration law: a tool for economic development and poverty alleviation

Since the 19th century, scholars from developing countries have been deeply concerned about the role law might play in their countries.<sup>10</sup> The relationship of law and development is at the very forefront of development policymaking, as government agencies, international organisations and the non-profit sector advocate the need for strengthening the rule of law in developing countries.<sup>11</sup> Law is considered a vital means for promoting economic growth, human rights and democracy.<sup>12</sup> It is contended that legal institutions play an independent and significant role in development.<sup>13</sup> Law is one way that societies have tried to provide protections for individuals and promote equality.<sup>14</sup> Ideas about the relationship between law and development play outstanding roles in contemporary thinking about development, both among scholars and policy-makers.<sup>15</sup> It is in this regard that refugee and migration law is considered a tool for development.

To understand how refugee and migration law can contribute to ‘development’, there

is a need for a basic understanding of the latter.<sup>16</sup> As used in this study, ‘development’ denotes both poverty reduction/alleviation and economic development. From a broad perspective, poverty reduction refers to improvement in the state of employment and income, food security, type of shelter, access to education, health and sanitation, and level of social and economic inclusion.<sup>17</sup>

From the outset, it is important to distinguish between refugees and migrants.<sup>18</sup> On the one hand, a refugee is a particular type of migrant who leaves his/her country of nationality for very specific reasons.<sup>19</sup> As specified in the 1951 UN Refugee Convention, refugees are considered a distinct category of people by virtue of the fact they are outside of their country of nationality and are unable or unwilling to return there because of a well-founded fear of persecution for reasons of their race, religion, nationality, membership in a particular social group or political opinion.<sup>20</sup> In accordance with the 1969 OAU Refugee Convention and the 1984 Cartagena Declaration, the refugee notion has been broadened to encompass other people who have fled events that pose a serious threat to their life and liberty.<sup>21</sup>

On the other hand, a migrant is a person who, for reasons other than those contained in the definition above, voluntarily leaves his/her country in order to take up residence elsewhere.<sup>22</sup> He/she may be moved by the desire for change or adventure, or by family or other reasons of a personal nature.<sup>23</sup> If he/she is motivated exclusively by economic considerations, he/she is an economic migrant and not a refugee.<sup>24</sup> Therefore, refugee and migration law, as used in this study, denotes a system of norms and propositions that aim at guiding actions of actors in various countries, and endorsed by state officials in relevant sectors,<sup>25</sup> with respect to refugees and migrants. In this context, the study is concerned with how refugee and migration law, a tool for economic development and poverty reduction, affects poverty and economic development and how it can be best implemented to alleviate poverty and improve economic development.

### **Effect of refugee and migration law on poverty and economic development**

One scholar noted that, in the past, researchers used to ask whether migration has a positive or negative effect on development.<sup>26</sup> He contends that today they are more likely to

ask ‘Why does international migration seem to promote economic development in some cases and not in others?’ and ‘Can policies be designed to influence migration’s impacts in migrant-sending economies?’<sup>27</sup> The scholar’s observation emphasises the point that we need to start focusing on the factors, such as law, influencing how human mobility affects economic development and poverty. We need to start asking: ‘How does refugee and migration law affect poverty and economic development?’

The key in analysing the effect of refugee and migration law on poverty and economic development stems from the understanding that ‘refugee and migration law is a tool for economic development and poverty reduction’. Being a ‘tool’, refugee and migration law can contribute either positively or negatively towards poverty and economic development, depending on how such law is framed. Largely, the contribution of migrants and refugees in both their countries of origin and destination is conditioned by their integration in the country of settlement, depending on their legal status.<sup>28</sup> Furthermore, the legal requirements associated with migration and their enforcement not only constrain migrants’ choices but also shape them.<sup>29</sup> Hence, how restrictive or not refugee and migration law is in the state concerned determines the extent of migrants’ and refugees’ contribution towards economic development and poverty reduction. Restrictive refugee and migration laws create un conducive environments within which refugees and migrants can contribute to economic development and poverty reduction through their remittances, skills and knowledge.

Similarly, refugee and migration law determines the context of reception within which refugees and migrants find themselves in destination countries. In this regard, it must be noted that the context of reception may have important implications for the direction of migrants’ and refugees’ social and economic investments.<sup>30</sup> If the context of reception, depending on the legal requirements in the destination country, are conducive such that they allow migrants and refugees to start businesses or become employed, the refugee and migration law would be said to be contributing positively towards economic development and poverty reduction.

States enact law and regulations to govern the issuance of passports, admissions, exclusion and removal of aliens, and border security.<sup>31</sup> States vary in the types of laws

and regulations adopted, with some being more restrictive than others, but all states adopt rules that govern entry into and exit from their territories.<sup>32</sup> Thus, less restrictive refugee and migration laws in a state allow for migrants' and refugees' entry into that state, therefore allowing the fruits of their skills and knowledge and remittances to alleviate poverty and improve economic development. Similarly, less restrictive refugee and migration laws give ample time within which refugees and migrants can settle and begin contributing effectively towards economic development and poverty reduction.

### **Towards an implementation of refugee and migration law that reduces poverty and improves economic development**

While appreciating that refugee and migration law is a tool for poverty reduction and economic development, regard must be had to the fact that migration is neither a cure nor a curse for development.<sup>33</sup>

However, there are ways to enhance migrants' contribution to economic development and poverty reduction in both countries or areas of origin and destination.<sup>34</sup> Safe, orderly and regular migration contributes to sustainable development, economic growth and food security.<sup>35</sup> Thus, it is important not to lose sight of the fact that it is not only how regular migration is that contributes to economic development and poverty reduction, but also how safely and orderly such migration is. That calls, therefore, for an interrogation of how refugee and migration law can best be implemented to achieve economic development and poverty reduction.

To begin with, effective implementation of refugee and migration law to achieve poverty reduction and economic development requires putting in place a system aimed at integrating refugees and migrants in the countries and communities where they have settled or they intend to settle in. Such a system demands that, first of all, there should be fiscal policies specifically targeting refugees and migrants. The policies, in support of the law, should aim at creating a conducive environment for refugees and migrants. For instance, the policies can aim at reducing remittance transaction costs and leveraging these remittances in ways that improve welfare and stimulate investments in migration source areas.<sup>36</sup> Furthermore, such policies should aim at instituting safe, orderly and regular migration.

Again, and most importantly, in order to achieve effective implementation of refugee and migration law, with an aim of alleviating poverty and improving economic development, there is need to integrate fully a human rights-based approach to development into refugee and migration law.

A human rights-based approach to policy development draws on agreed international human rights.<sup>37</sup> This approach works from the position that international human rights standards place an obligation and duty on governments to ensure that their plans, policies and processes uphold and promote these rights.<sup>38</sup> The human rights-based approach to development puts human rights at the heart of human development.<sup>39</sup> The approach presents a framework for the pursuit of human development with human rights standards and principles guiding that process and international human rights obligations providing the objectives of development.<sup>40</sup> The human rights-based approach to development is built on the principle of equality, non-discrimination and prioritisation of vulnerable groups.<sup>41</sup>

Thus, an implementation of refugee and migration law that integrates the human rights-based approach to development recognises that refugees and migrants are vulnerable people, yet still at the heart of human development. Such integration necessitates plans, policies and processes of concerned governments to promote international human rights standards to which every refugee and migrant is entitled. Successively, the approach would be key in developing an effective implementation of refugee and migration law that achieves economic development and poverty reduction by putting weight on refugees' and migrants' skills, knowledge and remittances.

### **Conclusion**

To sum up, migration is continually recognised globally as significantly contributing to economic development and poverty reduction. The focus has been on the refugees' and migrants' skills, knowledge and remittances, which are said to be key in improving economic development and poverty reduction. However, there has been inadequate attention paid to the relationship between refugee and migration law and economic development and poverty reduction. Realising that law is a tool for development and that, therefore, refugee and

migration law is a tool for poverty reduction and economic development, the essay found it necessary to inquire into the effect of refugee and migration law on poverty and economic development and to examine how it can be implemented to reduce poverty and improve economic development.

It has been contended in the paper that refugee and migration laws contribute to economic development and poverty reduction depending on how such laws are framed. Less restrictive refugee and migration laws are likely to achieve economic development and poverty reduction by creating a conducive environment for refugees and migrants to yield fruits through their skills, knowledge and remittances, and vice versa. In addition, it has been argued in the essay that an effective implementation of refugee and migration law that would achieve poverty reduction and improvement in economic development requires integration of refugees and migrants in destination countries or areas through policies focusing on them and by incorporating the human rights-based approach to development into refugee and migration law.

#### Notes

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# How does refugee and migration law affect poverty and economic development? How can it be implemented to reduce poverty and to improve economic development?

**T**he issue of refugees and migrants is currently one of the most pressing issues to the international community. Many people, owing to different factors, cross international borders every year. It can be understood from studies conducted by different organisations that the number of people crossing international borders has been increasing over the years and it seems logical to conclude that these numbers will most probably, if not certainly, increase in the years to come.

This essay will differentiate between refugees and migrants; explain the economic effects of refugees and migrants and the laws governing them from the perspective of both the origin state and the destination state; and then conclude by explaining how the laws should be implemented and how state actors should participate in order to achieve better economic development. The drive of this essay is to assess both the positive and negative effects of refugee and migration laws on states' economies and is not, by any means, to amplify the overweighing of one or the other effect.

## Refugees versus migrants

A refugee is someone who, involuntarily, moves away from his or her country owing to armed conflict or the fear of being persecuted. The 1951 Convention Relating to the Status of Refugees (hereinafter, the '1951 Convention') was an outcome of the problem of displaced people after the Second World War. However, present-day refugee patterns differ from the time in which the 1951 Convention was made. Currently, it is not only

the fear of persecution that drives people to cross international borders. Drought, famine, natural disasters, internal wars, etc, can all be factors that drive people away from their countries. Therefore, a strict application of the 1951 Convention of the 1967 Optional Protocol leads to the exclusion of 'internally displaced persons (IDPs) – including individuals fleeing natural disasters and generalised violence, stateless individuals not outside their country of habitual residence or not facing persecution, and individuals who have crossed an international border fleeing generalised violence'<sup>1</sup> from being given refugee status. As a result, some states have stretched the definition of a refugee in order to include such people.

On the other hand, 'a migrant is someone who chooses to resettle to another country in search of a better life. Not all migrants then are refugees, but all refugees can fall under the migrant umbrella.'<sup>2</sup> Some argue that many of those who claim to be refugees are not in fact refugees but migrants who flee their country due to economic reasons. This argument can be supported by the fact that a sizeable number of people who cross international borders move from a developing state to a developed state (south-north) or from a poorer state to a relatively better state in the global south (south-south). On the other hand, '[i]t may be argued that if the emphasis is placed on threats to life and freedom, there is little to distinguish between a person facing death through starvation and another threatened with arbitrary execution because of political beliefs'.<sup>3</sup> Conversely, the issue as to whether most of the people fleeing their home country really are in absolute

poverty, (for the sake of the argument, to the point of starvation), is questionable. In fact, it may be understood from studies that, in most cases, people in absolute poverty have neither the information nor the resources that could carry them through the process of crossing international borders. Due to the above factors, it has become more and more challenging to draw an adequate separation 'between a refugee and an economic migrant'.<sup>4</sup> Owing to this, states are faced with the difficulty of setting adequate parameters to distinguish between the two. The fact that the number of people claiming refugee status is growing increases the burden of host states. As a result, some states toughen the burden of proof needed by claimants to be entitled to such status. These in turn lead economic migrants to undertake illegal activities such as producing false evidence or devising other mechanisms such as going through different transit states before reaching the destination state. On the other hand, it may also lead to *refoulement* of actual refugees who are running away from a threat of persecution.

In general, the causes of crossing international borders, be it by a person having or yet to be granted the status of a refugee or a migrant, are numerous and complex. But, it is safe to say that it mostly emanates from political, social or economic dissatisfaction of people in their own country. Whatever the causes, refugees and migrants and the laws governing them have an impact, both positive and negative, on all states that are part of the process. These are the origin state, the transit state(s) and the destination state. The economic impacts such activities and laws governing them have on the states is, inter alia, one of the most significant issues.

#### **Economic implications: origin and destination states**

Due to different natural and man-made factors, the number of people who are forced to flee from their homeland has increased over the years. Regardless of their situation matching the definition of a refugee laid down by the 1951 Convention and notwithstanding the status they are actually granted as to being a refugee or otherwise, the number of displaced people is sizeable. Likewise, the number of migrants increases every year. Globalisation has provided us with ease of access to information and acquiring resources; communication and transportation is more accessible and cheaper than ever,

which contributes significantly to the increment of people crossing international borders for one reason or another. The economic impact, be it positive or negative, of refugees and migrants along with the laws governing them has, consequently, increased.

#### **Origin states**

Lack of a democratic society, civil wars, internal violence and natural disasters are some of the factors that could happen in the origin state to drive people away from their homeland. In this instance, there is not much origin states can do except take precautionary measures through establishing peaceful and stable environments for their citizens. Refugee laws tend to affect the host state more than the origin state because of the burden they place as to hosting refugees. These laws mostly deal with refugees who are already forced to flee from their country and not so much about the responsibility of origin states to control situations that are forcing citizens to cross international borders. When it comes to migration, states of origin are mostly poorer states and are not in a position to provide adequate jobs or access to other basic facilities that a potential migrant is looking for. Consequently, origin states won't have much interest in limiting migration because they don't want to deal with the frustrations of unemployed or underemployed citizens, which may lead to such activities as revolt and increment of crimes. As a result, the laws relating to migration may be loose and efforts to control illegal migration may not be satisfactory.

It is undeniable that migration has its own advantages in reducing poverty and promoting economic development.

'The main channels through which migration alleviates poverty are increased incomes from remittances, ability to smooth consumption, access to finance for starting a new business, as well as tapping in to the knowledge and resources provided by the international community of the migrant Diasporas.'<sup>5</sup>

It is not uncommon to see organised diaspora movements in origin states that are designed to give back to the community by way of participating in community-centred activities mainly in the education and health sectors and mostly focusing on rural areas. In addition, they participate in building infrastructure and other basic facilities to the public in co-operation with the government.

Diasporas, using their experiences and the skills they've learned, may invest in the country in a business the feasibility, profitability, contribution to sustainable development and advantage to the general public of which has been thoroughly assessed. They may also create new trade relationships with business organisations in the destination country.

Another important way through which an origin state may benefit is by way of remittances, which may be used to improve the living standards of their families such as supporting a better education and fostering better healthcare. It may also be used as a source of capital for diaspora investment in the origin country. Remittances, above all, are important 'for countries that are struggling to maintain their balance of payments, to enhance their economic competitiveness and to prevent the issues of poverty and economic disparity from becoming a threat to social and political stability'.<sup>6</sup>

However, it's important to bear in mind that loose laws on emigration have disadvantageous aspects, too. One example is the challenges migrants face in the destination country from violations of their basic rights. From the economic angle, some argue that even remittances, though useful in raising living standards, cannot be a reliable means of sustainable development as remittances are mostly used for private purpose for the families of the migrant and the use of such capital for macro-economic development is rare. Another important drawback that needs to be considered by origin states implementing loose laws regarding immigration is the moving away of skilled manpower, commonly referred to as 'brain drain'. 'Poorer states [often] devote [their] scarce resources to the education and training of their citizens, only to see those people being recruited by states whose citizens already enjoy a far higher standard of living.'<sup>7</sup> This affects the origin states mainly in the health sector because mainly rural areas will suffer from insufficiency of personnel. Although, some argue that the return of such skilled manpower will provide the origin state with new skills and resources. This is referred to as 'brain gain'. 'Migration may also raise inequality initially, as only the relatively well-off have the resources to send workers abroad and therefore receive remittances.'<sup>8</sup>

### *Destination states*

Migration and migration laws also adversely affect the destination state. 'There now seems to be a strong demand for cheap and flexible migrant labour in the world's more prosperous countries.'<sup>9</sup> 'There is increasing evidence that beyond short-term costs and negative impacts, displaced populations also bring benefits and longer term gains to their host communities and states, if managed well.'<sup>10</sup> This is why states may sometimes be observed, despite their propaganda, enacting less strict immigration policies. Although it is argued that immigrants tend to decrease the employment opportunities of the natives, studies show that most of the employment activities that migrants engage in are the ones left aside by nationals and thus have no direct correlation with the unemployment rate of nationals, with the exception of those natives who are uneducated and low-skilled. Migrants may also contribute to the economy of the destination state through taxes if they secure jobs and are properly paid for their work. In the same manner, refugees also increase demand, thereby contributing to the growth of the host state. Most of all, 'the host community may benefit from assistance programmes such as infrastructure and welfare services provided by agencies responding to refugees' needs'.<sup>11</sup>

Hosting refugees may be too expensive. One of the issues of the 1951 Convention is that it doesn't design any mechanism for states to share the burden of hosting refugees. It puts no limit on the *non-refoulement* principle. And yet, it doesn't set down a scheme as to how host states should cope with the expensive procedures of hosting refugees. The refugees may engage in '[d]epleting woodland for construction and firewood, and causing loss of natural habitat. The impacts of these externalities are negative, usually long-term, rarely compensated by public expenditure and only partially compensated by humanitarian or developmental assistance'.<sup>12</sup>

'Unlike [as is] commonly believed, around half of the official international migration from the South is to other developing countries rather than wealthier countries in the North.'<sup>13</sup> Hence, immigration to such specific countries may be disadvantageous in that they reduce the job opportunities of the natives who may already be struggling with unemployment and poverty.

### Designing favourable policies and implementing existing laws: the way forward

States have different approaches towards the advantageousness or otherwise of hosting refugees and accepting migrants. Regardless of their approaches towards it, however, it is nearly impossible to escape this burden. The only measure states may take is to mitigate such circumstances by way of their foreign policies. Nevertheless, it has to be noted that it is mostly migration, more specifically economic migration, that may be affected through such foreign policies and it doesn't have much effect on refugees since the responsibilities laid on high contracting parties arising from the 1951 Convention and other related conventions is strict. Further, it would be illegal as well as immoral to design policies with the intention of evading such responsibility. Considering the unavailability, hence, it is in everyone's best interest, both displaced people and the state, to design policies that enable the integration of refugees and migrants into society and give them an opportunity through which they may contribute to the development of the state at hand.

States and non-governmental organisations (NGOs) should work hand-in-hand to implement refugee and migration laws; share economic burdens of hosting refugees; carry out research; and exchange their research and experience on the issue at hand to design gap-filling customary laws. However, this is not usually the case and such collaboration is not often observed. 'Governments tend to assess the impacts and costs for the host community, while donors and NGOs focus on the outcomes of their skills-development and income-generating projects or cash and vouchers assistance for refugee livelihoods. Neither approach provides an aggregate account of the macro- and micro-economic and fiscal impacts and costs, nor are quantitative methods and hard empirical data noticeable by their absence.'<sup>14</sup>

As discussed above, refugees and migrants can contribute significantly both for the sending and receiving states' economies. The 1951 Convention incorporates provisions on the rights of refugees to gainful employment. Host states should implement this strictly, not just for the sake of refugees but also because integrating refugees into society helps the state mitigate the cost of hosting such refugees. 'The development benefits of labour migration depend upon the degree to which migrants

are protected and empowered by the origin countries from which they come and the destination countries in which they live and work.'<sup>15</sup> For example, ensuring the freedom of movement, controlling their working hours and work conditions, and making sure they are duly paid are some of the important aspects needed in order to ensure economic development of migrants and the public at large. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, under Article 1, grants migrant workers and members of their families the 'right to liberty of movement'.

'Protecting the rights of migrant workers additionally benefits destination countries by preventing the development of an unprotected working underclass of migrants which harms national workers by undercutting their pay and working conditions.'<sup>16</sup> However, policy makers in the destination state are not usually interested in making arrangements as such because they usually believe the burden prevails over the benefits. Thus, it seems that they treat refugees and migrants as a setback and not as potentials, in any way, for economic development.

One way through which poverty may be reduced is through remittances. 'A cross-country study of 71 developing countries found that a 10 percent increase in per capita official international remittances will lead to 3.5 percent decline in the share of people living in poverty.'<sup>17</sup> The cost of transferring remittances, however, is usually high. The average cost of remittances worldwide remains close to eight per cent – far above the three per cent target set in the Sustainable Development Goals (SDGs).<sup>18</sup> Reducing such cost is necessary because the fact that it is too high sometimes leads to the use of informal and illegal means of money transfer, which is extremely dangerous to the economy of a state.

'Remittances per se, however, are not sufficient to ensure investment and savings by remittance-receiving households'<sup>19</sup> for the fact that, as is discussed above, it is mostly based on the individual betterment of living standards and is rarely used for macro-economic development. Therefore, internal laws that create a suitable environment to use such remittances for reducing poverty and improving lives of the public at large should be legislated and implemented. Encouraging the diaspora community to invest and participate in community-based development schemes will also help them use their newly learned skills and knowledge of the diaspora in addition to

the remittances. This may be achieved through designing policies that give privileges such as taxation privileges to the diaspora in order to motivate their return.

States may sign bilateral or multilateral agreements related to the rights of those displaced, which in turn will contribute to their economic growth. Although, it may be argued that an origin state and a destination state usually have conflicting interests and the former is mostly affected from this because of lesser bargaining power arising from economic status inferiority. This is why there is a need for international instruments, such as the International Labour Organization (ILO) conventions, to include protection of migrant workers' rights.

The origin state has a responsibility mainly before migrants leave their jurisdiction and in the event of their return through facilitating their re-integration. The first measure to be taken should be to attempt to reduce unemployment and underemployment in order to reduce migration. However, accurate information and counselling must also be provided to citizens who decide to emigrate. A huge issue that negatively affects the economic development of both origin and destination states is the issue of illegal migration. Therefore, providing the necessary information and facilitating the means of migration is one way to fight the matter at hand.

Destination countries, on the other hand, may use the skills of migrants in a way that contributes to the development of the economy. It should be ensured that migrants are not paid lower wages than native workers because such trend will lower the wage rates in general, which is harmful for the national economy. A common mistake made by destination states is treating migrants as 'temporary issues' and not incorporating issues related to them in national policies. For instance, the education and health rights of them and their families should be given high regard because, regardless of the length of their stay, they form part of the community at large and treating them as such contributes highly to economic development. Facilitating loans for such people for education, housing or other needs also contributes to the economy of a state by way of improving their lives through which demand increases and, in turn, GDP increases.

## Conclusion

As discussed above, refugees and migration are currently pressing issues and so is the

significance of the economic effect they have on participant states. Many states enact their foreign policies considering the relation with their national economy. Both the positive and negative impacts of such policies and laws on the origin and destination states are discussed above. The number of refugees and migrants is increasing over the years and is expected to increase in the future. Considering this, the best mechanism to deal with it is to design policies and implement existent laws that are favourable to the integration of refugees and migrants into society through which alleviation of poverty and improvement of economic growth can be achieved.

## Notes

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# How does refugee and migration law affect poverty and economic development? How can it be implemented to reduce poverty and to improve economic development?

## Introduction

Countless nations and political bodies have struggled to define attitudes and policies towards migrants and refugees for the 21st century. This national and global debate usually revolves around economic impacts and the resulting effects of individual or groups of migrants and refugees. This submission endeavours to discuss the effect of migration and refugee law on poverty and economic development on host countries and how such law can be implemented to reduce poverty and improve economic development. This submission will begin by defining the terms ‘migrant’ and ‘refugee’. It will then go on to discuss the impact of migrant and refugee law on economic development and the poverty levels of the host country. Thereafter, this submission will discuss how migration and refugee law can be implemented to reduce poverty and improve economic development of the host country. Lastly, a brief conclusion will be given summarising the ideas discussed in the paper.

## Definitions

States and refugee advocates often insist that the terms ‘refugee’ and ‘migration’ are distinct categories, despite ample evidence that these labels blur in practice.<sup>1</sup> Migration law, on the one hand, deals with persons who are moving or have moved across an international border or within a state away from the person’s habitual place of residence, regardless of (i) the person’s legal status; (ii) whether the movement is involuntary or voluntary; (iii) what the

causes for movement are; or (iv) what the length of stay is.<sup>2</sup> Refugee law, on the other hand, deals with persons who ‘owing to well-founded fear of being persecuted for various reasons are outside the country of their nationality and are unable and unwilling to avail themselves of the protection of that country’.<sup>3</sup>

Until the 1950s, refugees were essentially considered a sub-category of migrants. The terms ‘refugee’ and ‘migrant’ were considered as fluid identities, with both words used to describe a ‘surplus population’ that included not only refugees but also unemployed nationals.<sup>4</sup> In an attempt to distinguish between a refugee and a migrant, an international convention on refugees was passed in 1951. This convention is known as the 1951 Convention Relating to the Status of Refugees and its accompanying protocol, the 1967 Protocol Relating to the Status of Refugees.<sup>5</sup>

The 1951 Convention defines a refugee and the rights afforded to those granted refugee status.<sup>6</sup> Since the signing of the convention, states and various organisations have broadly followed the line that ‘refugees are not migrants’ despite a broad recognition that the line between a ‘refugee’ and a ‘migrant’ is often relatively arbitrary.<sup>7</sup> Another important caveat is that existing studies do not exist distinguishing between immigrants and refugees.<sup>8</sup> This paper will address refugee and migrant law as correlated concepts and will not distinguish between the two. Additionally, the term migrant shall be construed as including refugees as well.

### The effect of migration and refugee law on economic development and poverty

Since the late 1970s, the international community has been well aware of the severe impact that large-scale migrant populations can have on host countries. The law pertaining to migrants and refugees can lead to long-term economic and social impacts on a host country.<sup>9</sup> One of the major effects that migrants have on the host country is economic impact. It is frequently thought that migrants are of little economic value and make initial demands upon arrival on the host government that end up being at the natives' expense.<sup>10</sup> As mentioned above, countries that host migrants for protracted periods experience long-term economic impacts that have a resulting effect on many aspects of the country, such as the poverty levels.<sup>11</sup> The resulting impact of migrant and refugee law on the economy and poverty levels of a host country are both negative and positive.<sup>12</sup>

The law regulating large-scale and protracted migrant influxes can have macro-economic impacts on a host country. Some of these impacts are associated with increased but uncompensated public expenditures related to the care and maintenance of the migrant population.<sup>13</sup> In the short term, additional public spending for the provision of first reception and then support services to migrants, such as housing, food, health and education, will increase aggregate demand.<sup>14</sup> In the medium and long run, the impact of migrants on employment and GDP will depend on the speed of their integration into the labour market, the extent to which the newcomers' skills will complement or compete with those of the native labour force, and their impact on the allocation of resources, product mix and production technology.<sup>15</sup> A 1999 report prepared by the International Monetary Fund and the World Bank asserts that a large influx of migrants strains the social and economic infrastructure of the host country. This results in the need for financial assistance on the part of the host country.<sup>16</sup>

Additionally, migration and refugee law that allows for an influx of migrants would put pressure on the market for affordable housing. This would result in an increase in rents and housing prices, which could have detrimental effects on the existing population, especially lower-income households, and make it difficult for incoming migrants to find housing where

labour demand is high.<sup>17</sup> Indeed, a lack of affordable housing and other housing barriers have been found to impede migrants' geographical mobility.<sup>18</sup> This impediment to their mobility affects the migrants' capacities to contribute positively to the host countries' economic development. Additionally, it results in high poverty levels in settled areas.<sup>19</sup>

It has been observed that children of migrants have, in general, lower education outcomes than their native peers, and the size of the gap varies across educational systems. This has important economic consequences because education is a key determinant of subsequent labour market performance and may affect social inclusion and integration.<sup>20</sup> Comparative studies show that there is substantial cross-country heterogeneity in immigrants' educational achievement gaps, even for immigrants of the same origin.<sup>21</sup> Moreover, while socio-economic background and the language spoken at home explain a large part of the performance gap in some countries, in others a significant gap persists even after accounting for these factors. Overall, this suggests that other factors – in particular, the quality of education and some features of the education system – can affect the educational outcomes of migrant children.<sup>22</sup>

One of the positive contributions of migration and refugee law to a host country is that it allows for the influx of persons with skills and knowledge that can be utilised for the benefit of local people. In this regard, the multiple ways in which migrants pursue their livelihoods can make significant contributions to the local economy.<sup>23</sup> Another important contribution of migrants to local economies is associated with their access to transnational resources provided by other migrants and co-nationals living abroad, including remittances and social networks.<sup>24</sup> These resources have contributed not only to the improvement of living conditions at the household level, but also to those in refugee camps. However, it is important to mention that, in general, remittances can also enhance inequalities since they are unevenly distributed and poorer households may not have relatives in the diaspora.<sup>25</sup>

This illustrates that migration and refugee laws that allow for the influx of persons into the host country result in those among the host population who have access to resources, education or power being better positioned to benefit from the migrant presence, while those who lack these resources in the local context become further marginalised.<sup>26</sup>

The potential economic impacts of migrant presence in the host country may result in inequalities between the migrant population and the host country population. These inequalities result in an increase in the poverty levels among not only the migrant population but the host population as well.<sup>27</sup> Migrants, more specifically refugees, are frequently viewed as benefiting from privileged access to resources unavailable to the host population. In this regard, refugee status offers an opportunity for education, literacy, vocational training, health, sanitation and basic livelihood.<sup>28</sup> However, when social services provided through international funding also target host communities, the likelihood that the local population will have a positive view of refugees increases significantly.<sup>29</sup>

### **Migration and refugee law as a means of reducing poverty and improving the economy**

There is a growing consensus that migration and refugee law is an integral feature of economic development and poverty reduction.<sup>30</sup> In order to better implement migration and refugee law and have it assist in economic development and poverty reduction, it must be incorporated into the national development plans of host countries.<sup>31</sup> Few national development plans incorporate laws pertaining to migration. Those that mention it tend to focus on immigration control, irregular migration and human trafficking, rather than also recognising the benefits of migration for economic development and poverty reduction. As a result, migration and development initiatives remain scattered, underfunded, lacking in national ownership and limited in scale and impact.<sup>32</sup>

The inclusion of migration and refugee law in national development strategies and plans such as poverty reduction strategies and economic development should be promoted. One such way of promoting this inclusion is by introducing coherent labour migration and employment policies that allow for a more effective matching of labour supply and demand of both high- and low-skilled workers.<sup>33</sup> This could include broadening opportunities for the temporary or permanent migration of low-skilled workers. Additionally, the formulation and implementation of laws that grant migrants early access to the private and public sector,

labour and self-employment would be a prerequisite for their speedy integration in not only the workforce but society as well.<sup>34</sup>

Furthermore, migration and refugee law needs to be revised at a national level in a manner that would enhance greater corporation between countries of origin and destination. This would help leverage diaspora contributions including trade and investment.<sup>35</sup> Tangible and sustained cooperation among relevant ministries, embassies, diaspora associations, development non-governmental organisations and the private sector can support diaspora groups. This in turn would help boost the host countries' economies and reduce poverty levels among migrant populations.<sup>36</sup>

Education policies, at both the system- and school-level, can improve the educational success of migrants' children. A high concentration of migrant students in low-quality schools, partly reflecting residential segregation, tends to widen the migrant-native education gap. Early inclusion in the education system, including a well-developed preschool system, is also beneficial.<sup>37</sup> Moreover, targeted measures for migrant students, such as allocating more resources to schools with a high share of migrants, training teachers for intercultural education, providing adequate language support and encouraging parental involvement, have also shown positive results.<sup>38</sup> Additionally, states should ensure mutual recognition of foreign qualifications. Origin and destination countries could create joint education programmes and curricula that reflect domestic and foreign labour market needs and provide information on overseas employment opportunities.<sup>39</sup>

Lastly, the regulatory framework for financial services should be revised with regard to migration and refugee law. This revision would reduce remittance transfer costs in the host country, including in rural areas.<sup>40</sup> In addition, barriers to market entry, including exclusivity agreements and skewed incentive structures, should be tackled. Public-private partnerships could enhance the interoperability of remittance transfer services by banks, postal networks, telecommunications operators and microfinance institutions. New financial products, such as micro insurance, could be developed to meet the specific needs of migrants.<sup>41</sup>

## Conclusion

The debate surrounding migration and refugee law is a timeless one. It can be divisive, or it can unite a country. Interests of citizens and migrants may sometimes coincide and sometimes diverge. It should, however, be noted that the relationship between the law regulating migration and poverty reduction is complex and uncertain; that between migration and economic development is even more so. This demonstrates that the impacts of refugees on the host country are not invariably negative, and that refugees can make positive contributions to the host society and create opportunities for migrants and non-migrants. Furthermore, it also shows that, in terms of the impacts and the opportunities the presence of migrants create, there can be winners and losers among migrants and non-migrants alike.

## Notes

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- 34 *Ibid.*
- 35 *Ibid* at p 18.
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- 37 See n 8 at p 25.
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- 41 *Ibid.*

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# How does refugee and migration law affect poverty and economic development? How can it be implemented to reduce poverty and to improve economic development?

**T**his essay deals with how refugee and migration law is connected to poverty and economic development. In order to achieve its designed purpose, the essay will first try to clarify the concepts of refugee and migration law, and poverty and economic development. Second, the essay will address the relationship between refugees and migrants with both poverty and economic development. It will try to explain how refugee and migration law can reduce poverty and improve economic development. Finally, a conclusion will be provided.

Since the very dawn of humanity, people have migrated. Exoduses and migratory flows have always been an integral part, along with other major determinants, of human history.<sup>1</sup> Over the last two centuries, migration levels have risen to an unprecedented level, primarily owing to the globalisation of economic activity and its effect on labour migration.<sup>2</sup> While the great majority of those who move are still internal migrants, the number of international migrants is substantial.<sup>3</sup>

The terms 'migrant' and 'refugee' are sometimes used interchangeably, but there is a crucial legal difference between the two.<sup>4</sup> A refugee is a person who has fled his or her country to escape war or persecution. The 1951 Convention Relating to the Status of Refugees (the '1951 Convention') defines a refugee as a person who, 'owing to a well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear is unwilling to avail himself of the protection of that country'.<sup>5</sup> Among those crossing the Mediterranean sea

in 2015, the greatest numbers were from Syria, Afghanistan and Eritrea. These people are considered refugees due to the presence of civil war, conflict and political persecution in each of these countries, respectively. On the other hand, a migrant is anyone moving from one country to another, unless he or she is specifically fleeing war or persecution. Migrants are considered refugees only if the criteria listed on the 1951 Convention relating to the status of refugees are fulfilled.<sup>6</sup> Hence, not every migrant is a refugee, but every refugee is a migrant. Refugees are a subset of migrants, both involving the movement of persons from one country to another and the laws that regulate their movement are refugee and migration laws.

International migration is a vital part of today's globalised existence. It can play a key role in development and poverty reduction. It has a clear benefit that could be enhanced, and disadvantages that could be minimised.

Many people are increasingly looking to migration as a way to provide for their families through the remittance of funds. International migrants' earnings sent back to countries of origin have significant implications for development. For some small countries, remittances represent a high share of Gross Domestic Product (GDP), such as in Tonga (31 per cent), the Republic of Moldova (27 per cent), Lesotho (26 per cent) and Haiti (25 per cent). So great is the impact that the World Bank theorises that a ten per cent increase in remittances as a proportion of a country's GDP could result in a 1.2 per cent reduction in the share of people living in extreme poverty.<sup>7</sup> There are more than 215 million international migrants and over 700 million internal migrants worldwide. According to official

estimates, migrants from developing countries sent over \$325bn in officially recorded remittances to their origin countries in 2010 – three times the size of official development assistance.<sup>8</sup> The actual amount of remittance is considered to be substantially higher, since this figure doesn't take into account funds transferred through non-formal channels. Remittance flows to developing countries remained resilient during the recent global financial crisis compared to significant declines in private capital flows; it tends to be a more predictable and stable source of income than official development assistance and foreign direct investment.

Evidence from Latin America, Africa, South Asia and other regions suggests that remittances reduce the depth and severity of poverty, as well as indirectly stimulate economic activity. Remittances also smooth consumption as they rise in times of economic downturns, financial crises and natural disasters. In Ghana, Ethiopia and Mali, remittances were found to help households to minimise the effects of economic shocks on household welfare.<sup>9</sup>

For a sending country, migration and the resulting remittances lead to increased incomes and poverty reduction, improved health and educational outcomes, and promote economic development. Besides, the welfare gain of migration for the destination country is substantial as immigration increases the supply of labour, which increases employment, the consumption of goods, increases trade and production, and thus GDP. The availability of low-cost childcare provided by migrants can enable young local women to go back to work. Also, less-educated migrants increase labour productivity as they complement the local labour force that will be better able to specialise in more productive complementary tasks. Furthermore, migrants are often willing to do jobs that locals are no longer interested in, such as care for the elderly. Migration of the highly skilled can also boost productivity through innovation and specialisation. Data from the United States shows that an increase in the share of migrant university graduates is positively associated with the number of patent applications and grants issued per capita. Destination countries rely on them to fill gaps in the labour market at all levels and to open up new markets.<sup>10</sup>

The contribution of migrants and diaspora communities is increasingly recognised in countries of destination and

origin in the form of remittance, trade and investment and through the transfer of technology, skills and knowledge. Thus, there is a connection between migration and poverty reduction as well as economic development, but these contributions from migrants can be achieved only if refugee and migration laws guarantee their protection. Too few channels exist for legal migration. The human rights of migrants are therefore compromised. Millions travel, live and work outside of the protection of the law. And those migrants are exposed to smugglers, who they pay much money to cross borders. They endanger their lives at the hands of traffickers and, once they reach their destination, work at a low wage and working conditions at the hand of corrupt employers. As they work in clandestine conditions, they don't have legal recourse to enforce their rights and, in case of injury, to claim redress.<sup>11</sup> In such situations, the remittance to the home country and contribution to the social welfare of the destination country becomes insubstantial. At the same time, their contribution in both poverty reduction and economic development becomes insignificant. But such a problem can be rectified by the migration laws states adopt. States, in adopting migration laws, should take into consideration that migration is primarily an economic phenomenon and very restrictive migration laws will result in more smuggling and irregular migrants because there are no legal channels to match the labour demand. Evidence from the US–Mexico and European Union borders suggests that increasing the number of border control agents increases smuggler's fees, paying billions to human traffickers and organised crime, as well as states wasting billions on ineffective border militarisation and security. It is unlikely to curtail the number of migrants as intended.<sup>12</sup> Providing legal channels for temporary migration, taking into consideration the labour market demand, is more likely to enhance the benefits of migration for all parties. Many destination countries have adopted laws to discourage further migration and even push out those migrants already in the country. Such protectionist laws threaten to undo the benefits that international migration has brought to both home and destination countries.<sup>13</sup> Thus, states, in adopting migration law (specifically immigration),

should make legal channels for migrants entering their borders, taking into consideration its labour market demand. In situations in which legal migration channels fail to reflect labour market needs, migrants are more likely to engage in irregular movement. Migrants in an irregular situation face a greater risk of exploitation and abuse; they also tend to lack access to work and basic services (such as shelter, education and healthcare) and are at risk of detention.<sup>14</sup> Thus, the regular migration channel should reflect the labour market demand in order to minimise irregular migrants (undocumented migrants).

Migration laws that deny migrants the same human right protections as any other human being based on their legal status reduce the positive contribution that migrants can make to poverty reduction and economic development.<sup>15</sup> In other words, if the migration law of a state denies the same legal protection to irregular migrants as it gives to regular migrants, then those who are irregular are prone to abuse and exploitation and suffer from lack of employment, social protection and basic services. Such migration law negatively affects the impact that migrants can make on poverty reduction and economic development. Thus, migration law should grant the same human rights protection to all migrants regardless of their legal status to reduce poverty and foster economic development. States should affirm the protection of the human rights of all migrants in their migration laws, taking into account age, gender and family considerations as well as specific vulnerabilities. To that end, states should ratify and implement the core international human rights and labour rights instruments, particularly those dedicated to protecting migrant workers, such as the International Convention on the Protection of the Rights of all Migrants Workers and Members of Their Families of 1990, and the Convention Concerning Migration for Employment (Revised 1949) (Convention No 97), the Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Convention No 143) and the Domestic Workers Convention (Convention No 189) of the International Labour Organization (ILO).

State migration law should ensure that everyone in the state, including irregular migrants, has access to education, basic healthcare and other essential services.

Migration law should provide migrants with opportunities, job training and language instruction to speed up their adjustment to the life of destination countries. Such law fosters economic development as migrants will have easier access to work. Besides, migration law should be implemented in a way that contains legal responses to xenophobic acts and any discrimination against migrants, and should provide effective access to complaints mechanisms and judicial remedies. States should also seek to improve public understanding of migrant contributions to home and host societies and address misperceptions of migration. Such efforts could be reinforced through national action plans developed in collaboration with the private sector, the media and organisations representing migrants, employers and workers.

In conclusion, there is a vivid link between refugee and migration law and poverty reduction as well as economic development. The type of migration law greatly affects migrants' contribution to poverty reduction and economic development. For instance, if a state adopts a strict migration law, then it will militarise its borders to prevent migrants entering its territory but this will only cause a huge spending of dollars. At the same time, it will create gap in its labour force as it fails to reflect the labour demand in its migration law, thus its economy will be badly affected. But, if states adopt a sound migration law that reflects its labour demand, then its migration law will positively affect its economic development.

#### Notes

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- 6 [www.diffen.com/difference/Immigrant\\_vs\\_Refugee](http://www.diffen.com/difference/Immigrant_vs_Refugee) accessed 22 December 2016.
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- 8 <http://go.worldbank.org/X9R1K8LZB0> accessed 22 December 2016.
- 9 *Ibid.*
- 10 *Ibid.*
- 11 See n 3 above.
- 12 [www.pnas.org/content/113/27/7449.full](http://www.pnas.org/content/113/27/7449.full) accessed 28 December 2016.
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# How does refugee and migration law affect poverty and economic development? How can it be implemented to reduce poverty and to improve economic development?

In migration and refugee laws, two economic approaches battle for supremacy: whether the laws must take a restrictive or liberalised approach. Alive to the economic justifications underlying each of the approaches, this paper argues that there is more economic gain in liberalising migration and refugee laws, especially in the face of globalisation, which has the potential value of promoting shared economic skills. However, for liberalised refugee and migration laws to impact meaningfully upon the economic development of a state, it is needful to have appropriate implementation measures that are accessible, fair, effective and efficient.

## Understanding poverty, economic growth and economic development

Poverty represents the greatest of foes against which humankind is determined to fight. This is why, for instance, the Millennium Declaration, adopted by leaders the world over, promised to 'free all men, women, and children from the abject and dehumanising conditions of extreme poverty'.<sup>1</sup> But, while there is a general quest to alleviate it, it remains a complex exercise to define poverty. Despite such complexity, one common way of understanding poverty is by 'classifying it according to the level of the disadvantage experienced: namely absolute and relative poverty'.<sup>2</sup> When seen as absolute, poverty is understood as 'a situation where incomes are so low that even a minimum standard of nutrition, shelter and personal necessities cannot be maintained'.<sup>3</sup> On the other hand, 'poverty is a relative concept'<sup>4</sup> in which sense it

is merely understood as 'an expression of the poverty of one entity in relation to another'.<sup>5</sup>

Poverty can also be defined in terms of a lack of capabilities to attain human potential. The World Bank (2000) understood poverty as a 'pronounced deprivation in wellbeing' and wellbeing as a 'capability to function in society'. Thus, it essentially considers poverty as existing when people lack key capabilities. In that sense, 'poverty is said to have various dimensions which include income poverty, education poverty, and security poverty, among others'.<sup>6</sup>

There exists a significant inter-link between economic growth, economic development and poverty reduction. Economic growth may be understood as a quantitative increase in the capacity of a country to produce goods and services across a period of time.<sup>7</sup> Usually, though not always, economic growth will lead to economic development, which has a qualitative aspect.<sup>8</sup> This is because economic growth, if properly designed, will improve the quality of people's standards of living.<sup>9</sup> The result is poverty reduction because a 'developed economy... offers an environment where there is reduced inequality between the people'.<sup>10</sup>

## How emigration laws affect the sending country

A true analysis of how emigration laws impact poverty and economic development in a sending country will largely depend on the approach that a particular emigration law takes: eg, whether it takes a liberal or restrictive approach. Additionally, it has been observed that the economic impact of

migration is not uniform across countries as it largely depends on the local context and the nature and intensity of migration flows.<sup>11</sup>

Nevertheless, when a sending country has liberal emigration laws, it may experience economic benefits. This is because, if people are able to emigrate and work abroad, they may send money home via remittances and thereby improve the welfare of those left behind. As Ratha observes, remittances are the central and most tangible link between migration and economic development.<sup>12</sup> Gibson and Mackenzie agree that '[r]emittances are one of the most direct ways that the migration of an individual can lower poverty for household members and other relatives remaining in the sending country'.<sup>13</sup> The World Bank (2006) confirms this by reporting that '[i]n small countries, remittances can account for a large share of GDP and foreign exchange. Even in a large country, remittances can greatly boost an economy'.<sup>14</sup> For instance, 'an estimated 150 million migrants worldwide... sent more than US\$300 billion to their families in developing countries in 2006'.<sup>15</sup> This is why O'Rourke notes that emigration has been 'a major source of poverty relief in most economies, allowing living standards to grow far more rapidly than they would have in its absence',<sup>16</sup> hence spurring economic development.

But, if remittances are to contribute meaningfully towards a more sustainable economic development, they need to be used prudently. It has thus been stated that the impact of remittances on the development of the domestic economy depends much on 'whether they are spent on consumption or investment'.<sup>17</sup> If used for investment, remittances will generally trigger an improved infrastructure and create employment opportunities. As a result, the government may be assured of more revenue, widening the country's tax base, which is central to the economic life of the state. As Brautigam warns: 'the failure of a state to raise revenue... may effectively restrict its ability to develop'.<sup>18</sup> But, apart from infrastructural investment, remittances may be applied to 'intellectual investment' in a sense that they may be used to finance the education of family members back home. The economic importance of education cannot be over-emphasised. One scholar, Lumela, notes that, '[i]n the modern world, education is widely recognised as a very powerful tool for poverty reduction... Quality education equips the people with necessary skills'.<sup>19</sup>

Additionally, liberalised emigration laws have good economic impact with their high potential of allowing 'human capacity building'.<sup>20</sup> This is because they may improve people's technical and behavioural skills as they learn new skills abroad. Being a parameter of globalisation, migration may help expose, complement and sharpen one's skills, values and attitudes, which, if applied appropriately upon return, can contribute to domestic economic development.<sup>21</sup> It has been stated that 'labour migration can be a vehicle... for transferring and upgrading skills'.<sup>22</sup> Emigration is therefore a valuable learning tool and a treasure in economic development.

However, the benefits of liberalised emigration come at a cost, the most significant challenge being 'brain drain'. This defines a situation where a country loses its skilled workers and only unskilled ones remain, as destination countries usually institute 'quality-selective' immigration policies.<sup>23</sup> Brain drain may therefore reduce the economic growth and welfare of those remaining behind, especially when the migrant would have generated positive benefits to the home country. This is worse when the migrant was educated, as the home country does not benefit from his or her education, which is 'the [principal] reason for national investment in education'.<sup>24</sup>

Yet, it has been submitted that these feared effects of brain drain are more theoretical than empirical,<sup>25</sup> such that a more rational legal policy remains to be liberalisation of emigration. Trachtman observes that 'there has been no empirical assessment of the effects of "brain drain" on developing countries'.<sup>26</sup> Indeed, Henderson states that '[i]t is not even possible to be certain that "brain drain" causes lack of development; it is [rather] more probable that lack of development caused migration'.<sup>27</sup> The result is that, largely, there is more economic benefit in flexing emigration laws in order to allow people to emigrate. If at all, it is domestic underdevelopment that causes people to emigrate in search of greener pastures, then the economic benefits of emigration should, in the long run, be able to compensate and mitigate against 'brain drain' as people will then find no reason to emigrate, as domestic economic development will have been attained.

### How refugee and immigration laws affect the host country

There exists an underlying economic dilemma as to whether the state should liberalise its refugee and migration laws in order to allow for the entry of refugees and immigrants in the state. And when hosting these groups of people, how should the law treat them if economic development is to prevail? Will their presence not press hard upon resources and opportunities? Is it perhaps possible that they will contribute economically to the host state? Such is the underlying dilemma that states have.

It is, however, not so difficult to agree that, by liberalising immigration and refugee laws, there can be numerous economic benefits that a host country may enjoy. Firstly, immigrants and refugees may bring with them such benefits as skills, knowledge, entrepreneurial spirit and innovation.<sup>28</sup> When there is labour scarcity in the host country, immigration and entry of refugees may increase the labour supply.<sup>29</sup> It has been stated that ‘migrants arrive with skills and abilities and so supplement the stock of human capital of the host country’.<sup>30</sup> Moreover, with surplus human capital, domestic workers will be capable of engaging in more specialised production of goods, and efficiently.<sup>31</sup> The result is that the prices of goods will be reduced and consumers will find them affordable,<sup>32</sup> something key to living a quality life, itself an essential indicator of economic development.

However, it is important to guard against maximising economic growth at the expense of economic development. As noted earlier, the existence of economic growth does not automatically translate into economic development. The fact that immigrants and refugees can contribute to economic growth through an increased quantum of productivity is meaningless if they are not allowed to enjoy a quality and dignified life like those in the host country. This invariably calls for a fair and non-discriminatory manner in which both the law and its authorities should treat these people. Soubotina and Sheram stressed in their work that:

‘[economic] development is also a *qualitative* transformation of a *whole society*, a shift to new ways of thinking and correspondingly, new relations and new methods of production... This comprehensive process of change has to involve most of the people and cannot be limited to... the top or in the capital city.’<sup>33</sup> (Emphasis author’s own).

The underlying argument is that immigration and refugee laws can be said to foster economic development if, and only if, they are fair, non-discriminatory and accommodative towards refugees and immigrants. Indeed, it has been submitted that, ‘[i]f the potential utility of migrants [and, arguably, refugees] as a development resource is to be satisfied[,] a significant improvement in their employment and social conditions in the host countries will certainly be required’.<sup>34</sup> Thus, the developmental impact of immigration and refugee laws will be shaped by the sorts of lives that the immigrants and refugees are able to lead once they have arrived in the host country.<sup>35</sup> Indeed, ‘the ways in which they are treated by the host authorities, by legal systems, by employers and by the wider public’<sup>36</sup> can define the extent of their economic contribution in the host country. It is thus important for host countries to ensure that immigrants and refugees living within their borders are able to live productive lives, enjoy adequate access to services, such as welfare services, and have their rights protected.

Yet, while it is true that liberalised immigration and refugee laws can have positive economic benefits, it is probable that hosting large numbers of refugees and immigrants may be detrimental to economic development, as this may press hard upon public resources and services. There is also potential that the host country will experience the costs of administering an immigration and refugee system.<sup>37</sup> Moreover, in the face of scarce job opportunities, the host country will have difficulty affording employment to its citizens. Be that as it may, Trachtman submits that immigrants contribute more to taxes and host economies than they receive in government services.<sup>38</sup> Indeed, while ‘[i]t is sometimes argued that immigrants [and, arguably, refugees] displace native workers... the available evidence does not support this perception’.<sup>39</sup> Therefore, the perceived disadvantages of liberalised immigration and refugee laws need not be exaggerated. It remains an economically plausible idea to flex immigrant and refugee accommodation.

### Implementing migration laws

It is one thing to list the economic gains of flexible emigration laws. It is another to set out the practical means by which such laws will be implemented to achieve economic

development. The law would be meaningless if all that was required was legislative enactment. Thus, to achieve desirable ends, the emigration laws depend on effective implementation.

If it is accepted that emigration fosters economic development of the sending country, then mechanisms must be put in place to facilitate the cross-border movement of people to work abroad. This can be done by '[r]emoving barriers that developing countries put in the way of their own citizens emigrating'.<sup>40</sup> Poor citizens are usually unable to access migration institutions, as these institutions are far away in the cities and, worse, they are characterised by cumbersome procedures for obtaining passports and official travel documents. It is, therefore, needful to increase the network of migration institutions and reduce the monetary and time costs associated with obtaining the travel documents.<sup>41</sup> Moreover, owing to institutional weakness, it is not unusual for migration officials to engage in corrupt practices and undermine the first-come-first-served principle at passport-issuing centres. There is need, therefore, for migration laws to provide for anti-corruption mechanisms that will provide proper checks and balances on administrative operations. Another barrier is that some countries have legal restrictions on the emigration of some categories of people, such as women. These restrictions usually take the form of preventing unmarried women travelling without the permission of their father or an adult male relative and of married women without the permission of their husbands.<sup>42</sup> Since such requirements are largely discriminatory, and therefore counter-productive, they should not be allowed to stand.

Having observed the pivotal role that remittances play in the economic development of the home country, it may be pertinent to increase their poverty-reducing benefits by lowering remittance costs. Firstly, governments must create micro-finance institutions that can positively work as remittance intermediaries: delivering remittances and mobilising surplus remittance funds for income-generating activities.<sup>43</sup> And, in order to ensure that the impact of these remittances is development-oriented, there is a need for governments to address poor investment climates obtaining within, so that remittances are not only consumed, but are also invested.<sup>44</sup> Furthermore, governments should encourage lenders to view remittances as a form of income worth taking into account when

assessing individuals for loans.<sup>45</sup> But, it is important to notice that, for most of these arrangements to be possible, governments should consider entering multilateral or bilateral agreements on the international scene in a bid to secure practically the interests of emigrants and to facilitate transfer mechanisms easily.

### Implementing refugee and immigration laws

One problem prevalent in implementing refugee laws relates to administrative delays in processing asylum claims and determining their legal status. Institutional efficiency is usually lacking in processing the claims and determining who is and is not a refugee. The lack of an expeditious determination procedure will impact greatly on the refugee's ability to contribute to the host society. Therefore, 'it is important that quick and fair decisions are made about migrants' legal status so that they can enjoy the same labour participation'<sup>46</sup> as the wider population. Moreover, it has been noted that 'extreme delays in receiving an answer on an asylum claim can have a serious negative psychological impact on an asylum seeker and their family members'.<sup>47</sup> That would dilute the zeal to contribute towards economic development.

In addition, there is need for the existence of independent and accessible quasi-judicial bodies to hear asylum cases, and opportunities must exist for asylum seekers to appeal to judicial bodies. It has been suggested elsewhere in the field of human rights that it is pertinent to inform asylum seekers 'about all domestic remedies available to them, in particular the possibility of judicial review before the courts and opportunity of being granted legal aid for such recourse'.<sup>48</sup> Loof and Gorlick add that 'the more complicated the procedural system, the more onerous the burden on the states... to adequately inform asylum seekers of their procedural rights'.<sup>49</sup> That would help effectively to protect the inherent rights of those seeking asylum.

Furthermore, there is need for civic-educative mechanisms geared towards preventing xenophobic and discriminatory attitudes against refugees and immigrants. Authorities must see to it that refugees and immigrants are being treated fairly. Upon arrival, mechanisms must exist to help them find suitable work that will help them contribute economically to their host societies; educating them about the labour market and their legal rights and obligations;

and offering them local language lessons and information about life in the host country.<sup>50</sup> Such a move would easily help integrate refugees and immigrants into the society and work better for economic development and poverty reduction.

Lastly, if the host country is to benefit from the skills of those who travel abroad, governments must be willing to welcome them back. Some of the ways that would encourage the return of migrants to their home countries include ensuring that pay structures and progression within the civil service do not unfairly penalise migrants who have worked elsewhere and helping returning migrants to find suitable jobs, or at least set up their own businesses.<sup>51</sup>

### Conclusion

The topic has exposed the utility of liberalised migration and refugee laws. While recognising the need to balance between liberalisation and stringency, it has generally been submitted that more economic benefits lie in adopting a more flexible approach to migration and refugee treatment, especially in this era of globalisation, where values, skills, and technical and entrepreneurial expertise, are bound to be shared, to and from, and beyond the borders. Yet, to implement these laws successfully, there is need, it has been noted, of institutional mechanisms that are accessible, fair, impartial, efficient, effective and corruption-free.

### Notes

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- 5 *Ibid.*, p 3.
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- 17 International Monetary Fund, (2006), p 10.
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- 25 *Ibid.*, p 8.
- 26 *Ibid.*
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- 31 See n 21 above, p 11.
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- 37 See n 21 above, p 11.
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# How does refugee and migration law affect poverty and economic development? How can it be implemented to reduce poverty and to improve economic development?

*The raging winds buffeted the rickety boat as the refugees huddled under threadbare blankets in a desperate attempt to keep warm. The rain began to fall and the cold wind whipped their faces, searing their skins with uncommon fierceness. Their gaunt pale faces were absolute Picassos of misery while their chattering teeth sounded more like the gourd rattles they made merry with in the idyllic days before civil war had ruined everything.*

*The sharp salty tang of the sea assailed her nostrils, reminding her of the bean cakes the women used to hawk on the roadside. The alarm bell rang, waking Fatima from this nightmare that had become a song on her vinyl disc of sleep, stuck on replay. She was bathed in cold sweat and flustered.*

*[Years later,] Fatima had come a long way from that refugee ship that drifted towards hope in perilous seas. She had become a distinguished academic who, on that morning, was to give a public lecture at a university on how refugee and migration law affects poverty and economic development and how it could be implemented to improve economic development. She roused her groggy self and began to read over the lecture on her iPad:*

It could be asserted that Adam Smith was the first ‘development economist’ and that his *Wealth of Nations*, published in 1776, was the first treatise on economic development. The study of the problems and processes of economic development in Africa, Asia and Latin America is, however, a recent endeavour. The thrust of traditional economics is the efficient, least-cost allocation of scarce productive resources and the optimum growth of these resources over time to produce an ever-expanding range of goods and services. The study of economic

development or development economics is different in that it deals with the economics of contemporary underdeveloped nations with a potpourri of ideological orientations, cultural backgrounds and very complex yet similar economic problems that usually demand new ideas and novel approaches. The ultimate purpose of development economics is to help understand developing economies in order to help improve the material lives of the majority of the global population and the very theme of this essay gives credence to this fact.

‘Development’ may be construed as the consistent elevation of an entire society and its social system toward a ‘better’ or ‘more humane’ life. However, the threads constituting the broad fabric of development include, inter alia, education and health. The effects of refugee and migration law on education, poverty and health will thus be discussed.

Refugee law can be defined as an aspect of international law that deals with the rights and protection of refugees. Thus, broadly speaking, refugee and migration law includes a number of principles and rules that regulate the international obligation of states with respect to migrants. This branch of law is closely linked with economic development and poverty issues because they share the same objectives. As aforementioned, the ultimate goal of development economics is to improve the material lives of the majority of the global population. Similarly, refugee and migration law has been formulated primarily with the aim of bettering the lives of migrants and refugees.

## Education

On Monday 25 April 2016, the House of Commons, the United Kingdom's lower house of Parliament, voted to deny entry to 3,000 displaced children from Syria.<sup>1</sup> What happens to the educational progress of these displaced children? They already lag behind because conditions in their home country have made it virtually impossible for regular teaching and learning to move on smoothly. During the rat race of seeking asylum, the primary concerns are for food, clothing and shelter. Education is relegated to the background as immediate needs take over.

History is replete with invaluable lessons and perhaps more than a cursory look should be taken at how issues were solved in the past. *Kindertransport* (Children's Transport) was the informal name of a series of rescue efforts that brought thousands of refugee Jewish children to Britain from Nazi Germany between 1938 and 1940.<sup>2</sup> In the wake of the infamous persecution of the Jews in Germany on 9 November 1938, known as *Kristallnacht* (the Night of Broken Glass), British authorities agreed to allow an unspecified number of children under the age of 17 to enter Britain from Germany, Austria and Czechoslovakia (the Czech Republic). Organisations and private citizens, in a great display of humanity, had to guarantee payment for each child's care, education and eventual emigration from Britain. In exchange, children were allowed by the British government to enter the country unaccompanied on temporary travel visas, and the understanding was that children would return to their families when peace returned to their native countries.

Children with sponsors went to London to meet their foster families and children without sponsors were housed in Dover Court Bay and other facilities until individual families volunteered to take care of them or until hostels could be organised to care for larger groups of children. This rescue mission was a collaborative effort between many organisations and individuals; ultimately, about half of the children lived with foster families and the others stayed in hostels, schools or on farms throughout Great Britain.

Lord Alf Dubs, who proposed the amendment to the immigration bill that would have allowed 3,000 Syrian children to enter the UK unaccompanied, was a beneficiary of the *Kindertransport*. He is thus a quintessential example of how an individual can achieve

educational goals and attain academic laurels if refugee and migration law is implemented so as to promote the education of migrants.

This approach was certainly better than is practiced today, where border control measures keep refugees and children in camps on the outskirts of the country and restrictive legislation makes the asylum-seeking process an incredibly tedious one. The children just stay in these shelters or camps and miss out on educational opportunities, whereas if what was done during the *Kindertransport* days were to be practiced now, they would be integrated into foster homes where they could start schooling as soon as possible. It was not a matter of governmental policy only; individuals opened up their homes and volunteered to be foster families. Will such humanity and hospitality be found in these times?

## Poverty

In January 2016, Denmark passed a bill allowing authorities to seize the jewellery of refugees, the stated reason being to cover the costs of hosting them during the asylum-seeking procedure.<sup>3</sup> In February 2016, when the law came into force, arriving asylum seekers were allowed to keep 10,000 kroner (€1,000) in cash and valuables but anything exceeding that was seized to pay for their stay. The 'jewellery law' is part of an immigration policy that makes it more difficult for refugees to become residents. With certain refugees, there is a waiting period of three years before they can apply to be reunited with their families. Legislation such as this has an adverse effect on poverty and economic development. These refugees, as a result of their attempts to flee conflict zones, often have depleted their resources and are impoverished. The fact that they are compelled by law to surrender their valuables is rather inhumane; these items could be their only source of capital. They could realise some proceeds by selling such items themselves to earn some money as a small but pragmatic step towards self-sufficiency.

As a riposte to the public outcry against the legislation by organisations such as Human Rights Watch and the United Nations, the Danish authorities responded that the legislation applies equally to Danish citizens, who have to sell any assets worth more than €1,120 (10,000 kroner) before they can receive benefits from the state. It is submitted that that is not a fair analysis. Danish citizens

have had the benefit of a relatively stable economy in a conflict-free environment and thus the opportunity to earn a decent living and improve their standards of living. Thus, having to sell assets worth more than €1,120 before they can receive benefits from the state would not be as Herculean a task for them as it would be for the refugees who have fled their countries where employment and steady flows of income have ground to a halt. This piece of legislation can be likened to wrenching the single straw that a drowning man is clutching to from his grip.

Germany also followed in Denmark's footsteps in January 2016. The southern German authorities confiscated cash and other valuables of arriving refugees to pay for their expenses. Articles seized included personal items of sentimental value such as family jewellery. The authorities argue that confiscation of valuables has long been a standard practice and is concordant with German federal law, which requires asylum seekers to resort to their own resources before being provided with state aid. According to Bavarian Interior Minister Joachim Herrmann, the federal rules correspond in substance to what is being practiced in Switzerland. He expressed this in an interview with *Bild* newspaper on 21 January 2016.

Refugees are often forcibly deported and when this happens they must begin again in their native countries or in new countries. More often than not, their countries are just barely coming to life after the destruction that civil war or political insurrection brings in its wake. The institutions and all the sectors of the economy become moribund. The refugees return home and need to grapple with such conditions. In countries of asylum, they may not have had access to good education or job opportunities because of their status as refugees and so they may not be able to better their lots and as such, when they are deported back to their home countries by operation of some refugee and migration laws and meet the failing institutions and economy, a vicious cycle of poverty just continues.

On the other hand, where refugee and migration law allows refugees to stay and does not forcibly kick them out, there are legion examples of how such refugees are able to combat poverty, rise through the ranks and contribute to the economic development of their countries. A classic example is Ilhan Omar, a Democratic candidate for State Representative in Minnesota, United States.

She and her family had fled civil war-torn Somalia and spent four years in a refugee camp in Kenya. She arrived in the US in 1995 unable to speak even a smattering of English. She improved and began translating for her grandfather at political events in the Minneapolis-Saint Paul area. She went on to win the Minnesota House of Representatives seat with 80 per cent of the vote, carving an indelible mark in the annals of history as the first Somali-American lawmaker in the US on Tuesday 8 November 2016.<sup>4</sup> In the position that she now finds herself, she has the political power effectively to contribute to economic development through the law-making process. Having experienced firsthand living as a refugee, it stands to reason that she will draw from her experience and support laws and policies that will burgeon opportunities for refugees hoping to make a fresh start.

### Health

Health conditions in refugee camps are horrendous. The overcrowding and poor ventilation give rise to a host of diseases. A healthy workforce is needed to improve economic development. If most of the people are ill and battling disease, how will they be able to work and earn a decent living? The little resources they own will be spent on accessing healthcare. Clearly, this continues the vicious poverty cycle and adversely affects economic development.

### Methods of implementing refugee and migration law to improve economic development

Uganda's 2006 Refugee Act allows refugees in that country to work, travel and even start their own businesses. A World Bank article has commented that that law is 'considered one of the most progressive and generous in the world.'<sup>5</sup> The legislation recognises the rights of refugees to live within the community, rather than in special camps. It also outlines how a refugee situation can cease once durable solutions have been found. Under this legislation, refugees are afforded the opportunity to fend for themselves instead of relying solely on state aid.

If every country would enact and implement laws that are as progressive as the Ugandan Refugee Act 2006, it would go a long way to improving economic development.

In Germany, in the wake of more than 1 million migrants and refugees arriving in the country in 2015, an ‘open door’ policy was formulated toward Syrian refugees. However, an investigation by *Der Spiegel* has revealed that these refugees and migrants have struggled to find work. It described the policy as ‘the jumble of individual [immigration] laws and ordinances...’ completely impenetrable for foreigners and the ‘17 different types of “residency permission”, “residency permit” and “tolerance” for refugees and migrants’.<sup>6</sup>

Tanzania, with a GDP per capita nearly 48 times smaller than Germany’s, began the process of granting citizenship to 200,000 refugees from Burundi in 2014, which, according to the United Nations High Commissioner for Refugees (UNHCR), is the largest group in UNHCR’s history to which naturalisation has been offered.<sup>7</sup> It would foster economic development if other countries would do likewise. Refugees who are offered naturalisation can be integrated into the country’s systems and find jobs where they can contribute to the nation’s development. This is by far a better alternative than sequestering them in camps where they are solely reliant on governmental aid.

In conclusion, it is evident that progressive policies that grant refugees access to social services, freedom of movement and the right to work are a better way to bolster economic development. They also reduce poverty in the sense that refugees are afforded the opportunity to be self-sufficient. However, in order to be truly effective, governments and other stakeholders must ensure that they invest massively in developmental projects in the communities where refugees are hosted so that it would not be the case that progressive policies merely exist but rather that they exist within a viable environment. The progressive policies could be likened to the balloon in a hot air balloon (ie, the framework), whereas the significant developmental investment could be likened to the hot air that would enable the balloon to soar towards the heights of improved economic development.

The above discussion appears to lean towards a view that integrating refugees within a country and giving them unimpeded

access to settle will surely reduce poverty and improve economic development. This has attendant security implications that cannot be overlooked, particularly in this age of increased terrorism. How can states get around this real fear? While it is true that some of these migrants may be susceptible to terrorism, it is doubtful that the entire refugee population in a particular community would be ready to engage in it. Thus, some of these migrants could be trained as counterterrorism agents. Since one of the major concerns of refugees is to be gainfully employed, an opportunity to work in the security sector would be welcome. They could be trained to carry out surveillance and share information gleaned on any suspicious activity with law enforcement agencies. Counterterrorism investigations are labour intensive. Large numbers of refugees could thus be employed in this sector and this would go a long way to reduce poverty and boost economic development.

#### Notes

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# How refugee and immigration laws affect poverty and economic development and how these laws can be implemented to reduce poverty and improve economic development

## Introduction

People come to settle in another country permanently as refugees or immigrants for many different reasons. Chief among these reasons are conflicts and natural disasters. Ostensibly, refugees and immigrants are perceived and received with disfavour in the host country owing to the belief that they worsen socio-economic conditions. As a result, countries pass laws aimed at controlling the entry of refugees and immigrants. This paper discusses how refugee and immigration laws affect poverty and economic development, and how these laws can be implemented to reduce poverty and improve economic development. It is to these two points that this paper now turns.

## How refugee and immigration laws affect poverty and economic development

It is well documented that refugees and immigrants are often resented by host countries on a debatable belief that they aggravate the social and economic situation of the host countries. This resentment is reflected in the refugee and immigration laws countries pass. It is important that this paper looks now at how immigration and refugee laws affect poverty and economic development.

## *How refugee and immigration laws affect poverty*

A pervasive perception in host countries about refugees and immigrants is that these people are helpless<sup>1</sup> and unskilled.<sup>2</sup> Premised on this belief, countries pass laws to control their entry for fear of worsening the poverty trap. This is true in that refugees and immigrants work lower-paid jobs and, resultantly, kill the interest of natives to look for jobs.<sup>3</sup> The result of this is that natives often remain unemployed thereby remaining in poverty. However, it is worth noting that refugees and immigrants do affect poverty positively in that they weaken prices of goods through food sales.<sup>4</sup> This weakening of prices reduces poverty by raising the buying power of the poor people in the host countries in that they buy things on lower prices than before. Again, refugees and immigrants generate jobs as they spend their incomes on food, goods and services, which increases demand.<sup>5</sup>

## *How refugee and immigration laws affect economic development*

Without doubt, refugee and immigration laws affect economic development both negatively and positively. Refugees and immigrants negatively affect the host country's economy by upsetting its spending levels. This happens, firstly, because refugees and immigrants become a security threat to the host country. This results in increased government

spending on security services to monitor refugees and other immigrants. Secondly, refugees and immigrants often come in large numbers thereby causing a population surge that puts pressure on social services. In this regard, the government may be forced to spend extra resources to ease the pressure. Lastly, refugees and immigrants need homes and services tailored to meet their everyday needs and this also requires spending.

On a positive note, however, refugees and immigrants provide a steady supply of low-wage labour, which in turn attracts investment. Investment improves economic development. Refugees and immigrants also expand the host country's tax base by paying taxes through the money they earn.<sup>6</sup> The more immigrants a host country receives, the greater its tax base, thereby improving its economic development a wider tax base means more money collected.

### **How refugee and immigration laws can be implemented to improve economic development**

From the foregoing it can be seen that refugee and immigration laws affect poverty and economic development both positively and negatively. However, these laws, if implemented proactively, can improve economic development. For example, the host countries can pass laws that (a) facilitate the meaningful integration of refugees and immigrants; (b) create deliberate opportunities to promote the positive interaction of refugees and immigrants with the host country's economy;<sup>7</sup> and (c) re-channel the labour of refugees and immigrants into employment areas where there will be little or no conflict with native populations, and expand access to land for refugees and immigrants. This paper will look at each of these points.

#### *The facilitation of meaningful integration of refugees and immigrants into society*

The refugee and immigration laws of the host country should not be hostile to an influx of refugees and immigrants. For instance, these laws should not make it a crime to be in the country without documentation. They should, on the contrary, purposefully provide for ways in which refugees and immigrants without documentation are provided with meaningfully humane integrative measures aimed at making them feel welcome and at

home. These integrative measures should apply to both refugees and immigrants with proper documentation as well. It is only when they feel welcomed that refugees and immigrants are able to tap into their potential, thereby making active use of their talents to eke out a living in the host country. In this way, refugees, especially immigrants, will make the most use of their 'talent and ingenuity', which are a great resource 'in the fields most tied with innovation'.<sup>8</sup>

Additionally, because they will then feel at home, refugees and immigrants will not send the money they earn back to their countries of origin but will spend it instead in their new country, thereby increasing the host country's buying power, which in turn creates more jobs and further expands the tax base. The International Monetary Fund, for example, states that refugees who meaningfully integrate into new countries are estimated to boost the annual input of the European Union and Germany (in this instance) by 0.1 per cent and 0.3 per cent respectively.<sup>9</sup>

#### *The creation of opportunities to promote interaction of refugees and immigrants with the host country economy*

The refugee and immigration laws of host countries should purposefully create opportunities aimed at promoting the interaction of refugees and immigrants with their host economy. For instance, the laws can provide employment opportunities or financial resources to refugees or immigrants who prove to be gifted in the areas of technology, biomedical sciences and other areas where innovation is key.

Related to this, host countries can fund projects initiated by refugees or immigrants where they are convinced that such projects have the potential to address a real challenge. As a way of, say, addressing rural–urban migration in the host country, the host country can qualify that state funding will be offered to the refugee or immigrant (only) where the projects in question are located and implemented in the remotest of rural areas. In this way, the host country will achieve two things: firstly, it will create jobs in the area where projects are located, and, secondly, it will solve a problem (in this instance) of urbanisation. It can be seen here that the money that could have been used to deal with urbanisation-related problems will be used to provide for other pressing social needs. Further to this, the refugees and immigrants will be able to meet their fundamental needs

themselves, thereby significantly minimising the pressure on the host country's budget, which in turn improves its economic development.

### *Channelling the labour of refugees and immigrants into employment areas with little or no conflict with native populations*

Thirdly, refugee and immigration laws can also improve economic development by channelling the labour supplied by refugees and immigrants into employment areas where there will be little or no conflict with native populations. It has already been stated herein that refugees and immigrants expand the supply of labour. Even if refugees and immigrants are low-skilled, their skills may nonetheless be of value when appropriately channelled. It has been observed that low-skilled natives prefer jobs demanding communication skills to manual jobs where there is competition with refugees and immigrants.<sup>10</sup> The result of this is that there is specialisation and a clear demarcation of jobs between native populations and refugees and immigrants, which leads to high productivity and improved economic development. Furthermore, low-skilled refugees and immigrants can be of better use in the provision of services such as care for the sick and elderly, as native populations may find these jobs to be of low social status or as a dent on their self-esteem and usefulness to society.

### *Expanding access to land for refugees and immigrants*

Lastly, researchers have found that refugee and immigration laws expanding access to land for refugees and immigrants have the potential to improve the economic development of the country because refugees and immigrants realise higher yields from investing considerably higher labour.<sup>11</sup> In so doing, they contribute to the improvement of the host country's economic

development through the production and supply of large quantities of food.

## Conclusion

In conclusion, refugee and immigration laws affect poverty and economic development both negatively and positively. However, when implemented proactively – for instance, by facilitating integration of refugees and immigrants, creating opportunities for them to promote their interaction with the economy, channelling their labour and expanding their access to land – refugee and immigration laws can improve economic development. Refugees and immigrants, when better supported, tend to improve economic development.

## Notes

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- 10 See n 1 above.
- 11 Adam Withnall, 'Welcoming refugees with plots of land and cash "gives boost to local economy"' (*The Independent*, 28 October 2016) [www.independent.co.uk/news/world/africa/uganda-wfp-refugees-report-giving-asylum-seekers-plots-of-land-boosts-economy-a7385516.html](http://www.independent.co.uk/news/world/africa/uganda-wfp-refugees-report-giving-asylum-seekers-plots-of-land-boosts-economy-a7385516.html) accessed 2 November 2016

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# How does refugee and migration law affect poverty and economic development? How can it be implemented to reduce poverty and to improve economic development?

In the imperfect world in which we live, the trend of migration is becoming prevalent. In recent years, migration has been making its way steadily to the top of the continental and international affairs agenda. As the root causes of migration are many, it calls for comprehensive and balanced migration laws and policies, which take into account the effects of migration, migration policy and migration law on reducing poverty and that of improving economic development.

The purpose of this essay is to show that a properly designed and implemented migration law can help developing countries in improving their economies. The essay is divided into five sections. Section one deals with the definition of important terms; section two is about the relationship between law and economic development; section three discusses the relationship between migration law and economic development; section four suggests a design and implementation strategy for migration law; and in the fifth and final section concluding remarks will be given. The fact that the writer of this essay focuses on an issue through a particular lens, however, is not meant to exclude different approaches to the problem.

## Definitions

### *Refugee, migration, refugee law and migration law*

The terms 'migrant' and 'refugee' are often used interchangeably, but there is also a legal difference between the two terms. The 1951 Convention on the Status of Refugees (the '1951 Refugee Convention'), negotiated after

World War II, defines a refugee as 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 to, or owing to such fear, is unwilling to avail himself of the protection of that country'.<sup>1</sup> Refugee law encompasses customary law, peremptory norms and international legal instruments. International instruments directly applying to refugees are the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees.

When we see the definition for the term 'migrant', anyone moving from one country to another is considered a migrant unless he or she is specifically fleeing war or some form of persecution. Migrants may be fleeing poverty, seeking better opportunities or may be migrating to join relatives who have gone before them.<sup>2</sup> Migration law is an umbrella term covering a variety of principles and rules that together regulate the international obligations of states with regard to migrants. Such broad range of principles and rules belong to numerous branches of national and international law such as human rights law, humanitarian law, labour law, refugee law, consular law and maritime law.<sup>3</sup>

As we can see from the definition given above, the terms 'migrants' and 'refugees' have overlapping meanings, implications and definitions. The basic difference among them is the root cause for the movement of people from one area to the other. As we can see from the definition, migration law has a broader area of coverage than refugee law,

which specifically concerns the protection of refugees. But the basic principles governing the two legal regimes are more or less the same. The basic principles that apply to refugee law would apply to migration law as well. Moreover, the policy options available for both legal regimes are complementary to each other. So, for the purpose of this paper, the two legal concepts are taken as overlapping or complementary legal terms and there is no further distinction made between them in this essay. The discussion in this essay not only focuses on international migration law, but also touches upon regional and national migration laws or laws that are not purely migration law but have a connection to it.

### *Reducing poverty and improving economic development*

Poverty has historically been accepted in some parts of the world as inevitable, as non-industrialised economies produced very little while their populations grew, making wealth scarce. This assumption about poverty does not consider what is on the ground. Poverty reduction is a set of measures, which can be both legal and economic, that are intended to permanently lift people out of poverty.<sup>4</sup> Economic development is the process by which a nation improves the economic and social wellbeing of its people.<sup>5</sup> The term has been used frequently by economists, politicians and policy designers. In much literature, the reduction of poverty is presented as the resultant effect of economic development. In this essay, the reduction of poverty and improvement of economic development are taken to mean the same thing unless the context requires otherwise. The focus for economic development and poverty reduction in this essay is on developing countries.

### **The relationship between law and economic development**

The relationship between law and economic development has been a central concern of modern social theory.<sup>6</sup> Today, the relationship between law and economic development is at the very forefront of development policy making, as government agencies, international organisations and the nonprofit sector advocate the need for strengthening and enacting legislation that would have an impact on economic

development.<sup>7</sup> In many western or developed countries, the accumulation of prevailing legal rules provides a legal framework that contributes to developing and maintaining economic imbalances.<sup>8</sup> The rationalisation and systematisation of the law in general and the increasing calculability of the functioning of the legal process in particular, constitute one of the most important conditions for the existence of capitalistic enterprise, which cannot do without legal security.<sup>9</sup> A rational system of law plays a crucial role in the economic development of the West by allowing individuals to order their transactions with some predictability.<sup>10</sup> This practical experience of developed countries shows that law can play a critical role in the reduction of poverty and in fostering economic development.

Poverty is partially created and maintained by law, whether through statutory enactment, bureaucratic action or inaction, or judicial interpretation.<sup>11</sup> Conversely, law can be a tool for reducing economic imbalances, improving economic development and reducing poverty. While poverty is certainly not an issue of only individual fault, most of the time it has individual ramifications. To believe that poverty is based only on individual failure ignores the legal structures that create and perpetuate income imbalances and poverty both internally to a nation state and globally. So, in not regarding poverty as individual fault and by finding a general solution to reduce it, such as legal frameworks that aim to reduce poverty, law can contribute to the reduction of poverty in developing countries.

### **The relationship between migration/refugee law and economic development**

It goes without saying that migration is neither a cure (complete solution by itself) nor a curse for development. However, there are ways to enhance migration's contribution to economic development in migrant-sending areas. This is especially true for international migration, because remittances per migrant abroad tend to be larger than those from internal migrants, and remittances from foreign migrants are likely to have a low correlation with local income, making international migrants an ideal income-insurance policy.<sup>12</sup> These are some of the ways in which governments and foreign aid donors have begun to think about and design policies to make migration a more productive tool for development.



As many other laws have an effect on the reduction of poverty, migration law (refugee law) has its own impact in improving the lifestyle of a society and enhancing economic development. Refugee laws beyond affording some protection for refugees should aim also to improve the economic opportunities of both refugees and society in general without neglecting their original purpose.<sup>13</sup> At the global level, some initiatives have underscored the need for a comprehensive and balanced approach to migration law or migration management, taking into account realities and trends as linkages between migration and other key economic, social, political, humanitarian and development issues.<sup>14</sup>

Building balanced, appropriate and comprehensive migration legislation and structures that take into account the linkages between migration law and economic development at the national and regional level can result in significant benefits for both states of origin and destination. For the states of origin, for example, remittances and skills technology transfer can assist with overall development objectives.<sup>15</sup> For destination states, labour migration may satisfy important labour market needs. Labour migration law that incorporates appropriate labour standards also benefits labour migrants, members of their families, and can have a positive impact on the economic status of society in general.<sup>16</sup>

Migration laws can make a positive contribution to poverty reduction and development. However, this can be significantly undermined where governments do not take responsibility for managing migration, and migration policies fail to take account of the factors that offer benefits and lessen risks. Well-managed migration regimes can help developing countries make the most of potential benefits arising from migration and reduce some of the risks.

### **Design and implementation strategy for using migration/refugee law as a tool in improving economic development**

The root causes of migration are many; among them development-related causes play a major role. Development is a primary cause of migration, but it is possible to use migration as an opportunity to promote development. In order to use migration law as a tool for economic development there are different approaches to be followed. These approaches

deal with how migration law should be designed in order to achieve the goal of poverty reduction. In this section we will see the design and implementation of strategies of migration that would enable us to use them as a tool for improving economic development.

1. **Giving the law an humanitarian spirit:** In order to achieve economic development, migration laws should be prepared through a desire to create a better world in which the horrors of war would not be repeated. So far, as the world remains an imperfect one, it should at least be ensured that victims of oppression and persecution forced to leave their home country as refugees should be decently treated by the international community. The creation of an international agreement by itself suggests that states benefit overall from the protection of refugees, at least they thought so when the agreement was ratified.<sup>17</sup> So it is important to manage migration in a spirit of shared responsibility and cooperation. Working together in the spirit of mutual respect for better management of migration in a comprehensive, integrated and holistic manner can add value to society in general. Adding this principle in migration laws is indispensable for using migration as a tool in poverty reduction, because it is a base for subsequent cooperation among states.
2. **Avoiding the path dependence:** Looking for new approaches and experience for solving problems is important in using migration law as a tool for improving economic development. Walking always the old route (path dependence) and avoiding new ways of looking at one particular problem would be detrimental to society in general. For example, many developed countries, in order to tackle the refugee problem and reduce mass migration in their country, adopt the old restrictive migration approaches in their migration laws. But it has been said in research<sup>18</sup> that more restrictive immigration laws, rather than reducing migration, may produce more undocumented immigrants and create further problems. This means that if greater efforts to manage migration are primarily restrictive in nature, however, ignoring labour market needs and family ties, they will impose high costs and are likely to be ineffective. Related to the above example, some developing

countries use policies that aim to keep people at home but the ineffectiveness of this approach in history teaches us convincingly that trying to keep people at home is not only very costly, it is futile. Another illustration: scholars<sup>19</sup> argue that reforms in which wealthy states paid poorer states to resettle refugees from other poorer states would be more efficient than current refugee policies that focus on providing aid in refugee camps and resettling refugees from camps to wealthy states. Here I am not fully endorsing their proposal; rather, I want to show that there are different angles to look at a particular problem. So, it would be better to look for new ideas, thoughts, approaches and policies in order to make migration contribute to the reduction of poverty.

3. **Adopting a cross-border and interdisciplinary approach:** Multiple legal discourses should be analysed from a cross-border perspective. Labour and welfare laws should not be viewed as a domestic issue by any nation state because migration today has risen to an unprecedented level. Adopting common regional policies for the management of migration and encouraging cooperation on labour migration issues is indispensable to use migration as a tool in reducing poverty. Adopting an interdisciplinary approach in migration law by allowing us to look at the problem from different angles would base the labour recruitment and admissions systems on clear legislative categories and facilitate the harmonisation of immigration policies with labour laws.
4. **Engaging the diaspora:** Migration can be used for good purposes because migrants can give feedback on such things as the transfer of remittances, knowledge, skills and technology.<sup>20</sup> In order to benefit from these opportunities, developing countries should work in collaboration with diasporas and create conducive environments to facilitate the participation of migrants to help the development of their own countries. Governments of developing countries and other international organisations such as the African Union (AU) should be encouraged to strengthen their relationships with the diasporas to create enabling conditions for the participation of migrants in the development of their home countries. This includes creating the necessary political, social and economic conditions such as enabling policies, environments, democracy and good governance to serve as incentives to attract diasporas and promote investment by diasporas. Facilitation and policy intervention in community development activities organised by migrants may have major poverty-reducing implications through channelling the service to target the poorest parts of society. But systematic studies are required to measure the impact of such philanthropy toward saving it from abuse.
5. **Tackling brain drain:** While using an opportunity created by migration for improving economic development in developing countries, addressing the negative impacts of migration (eg, brain drain), human trafficking and child trafficking in developing countries would be a very important task. Among the negative effects of migration, brain drain occurs when significant numbers of highly skilled nationals leave their state of origin to seek livelihoods abroad and this phenomenon can have detrimental effects on the economies of states of origin by hampering the growth and development of industries and service sectors where such highly skilled nationals are needed. The market for advanced skills is becoming a truly global market, and the most dynamic industrial economies are admitting or recruiting significant proportions of highly trained professionals from poorer countries. To support the return of qualified nationals, residents in developed states through appropriate re-settlement incentives; creating appropriate legal and institutional mechanisms within relevant ministries to manage relations with nationals abroad; facilitating transfer of scientific knowledge; and encouraging trade and investment are necessary tasks that should be performed by developing states.
6. **Encourage legal remittance channels:** The total global volume of remittance transfers to developing countries far exceeds official development assistance (ODA) and has important macro-economic effects by increasing the total purchasing power of receiving economies.<sup>21</sup> Remittances can contribute to the national economy of the country of origin by reducing the depth and severity of poverty and increasing financial flows to the national economy.

Recognising the advantage of remittances and encouraging legal remittance channels – which require the adoption of sound macro-economic policies conducive to investment and growth and appropriate financial sector policies that encourage financial institutions and their outreach – and indentifying ways to maximise the developmental effects of remittances, as well as adopting a legal framework for improving remittance transfer mechanisms, are all key strategies in using migration for good and as a tool in reducing poverty.

7. **Working on the principle of equality:** In order to use migration law for economic development, migration laws should be based on golden rules, among them the principle of equality. Incorporating this principle in designing and implementing migration laws in both developing and developed countries is very important. So, in order to use migration law as a poverty-reducing mechanism, states are advised to incorporate equal opportunity measures that ensure equal access for labour migrants and nationals in the areas of employment, occupation, working conditions, remuneration, social security, education and geographical mobility.<sup>22</sup> This also requires states to develop or promote anti-racist and gender-sensitive human rights training for public officials.
8. **Proper institutions:** Designing and trying to implement comprehensive legal frameworks that are aimed at reducing poverty and enhancing economic development would not be meaningful without building proper institutional structures that successfully implement the designed policy and enacted laws. Today's development policy assumes that a country must adopt the proper institutions to facilitate economic growth. Laws or policies should not be designed and enacted just for the sake of it; they should be designed for implementation. Enacting laws that are difficult to implement by the institutional framework is a problem in itself. Thinking that migration laws would assist in reducing poverty without legally and practically building proper institutional frameworks for the implementation of the laws is meaningless. So, if developing countries intend to use migration law as a tool for improving economic development and reducing poverty, they should establish effective institutions that would implement the designed policies and laws.

## Conclusion

Economic development and migration/refugee issues have been moving steadily towards the top of the international agenda. While looking for the solution, law as an instrument to manage such issues is coming to the forefront of the contemporary world. This is because history and experience have proved the efficacy of the law as a tool in improving economic development. Building balanced, appropriate and comprehensive migration legislations and structures that take into account linkage between migration law and economic development at the international, regional and national level can result in significant benefits for both states of origin and destination. So, by employing appropriate migration law that would enhance economic development, migration law can be used as an engine for reducing poverty and improving economic development.

## Notes

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- 18 Lucy A Williams' 'Challenges to the artificial separation of legal arenas' confirms this proposition.
- 19 Ryan Bubb, David I, Michael, Levine Kremer's *The Economics of International Refugee Law* argues in favour of this position.
- 20 See n 8 above.
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# How does refugee and migration law affect poverty and economic development? How can it be implemented to reduce poverty and to improve economic development?

**R**efugee and migration law, in this discussion, is a 'general term encompassing legal principles and rules that work to regulate the international duties of States in relation to migrants'.<sup>1</sup> These principles and rules may fall under a number of branches of law such as human rights law, humanitarian law or labour law, among others.<sup>2</sup> Refugee and migration law also assist states in developing migration legislation and policies that conform to international migration laws in order to manage migration flows more effectively and in a manner that is in line with international law.<sup>3</sup> These principles and rules have a largely negative bearing on the issues of poverty and economic development. For the purposes of this essay, 'poverty' means people 'having insufficient resources or income including lack of basic human needs such as adequate nutrition, food, clothing, housing, clean water and health services'.<sup>4</sup> 'Economic development' will be used to mean the '[rise in] the economic well-being and quality of life for a [country] by creating and/or retaining jobs and supporting or growing incomes and the tax base'.<sup>5</sup> This paper will discuss exactly how refugee and migration laws affect poverty and how the same can be implemented to reduce poverty and improve economic development.

The first rule is that, when people are admitted to a country as refugees, that is, '[persons who are] compelled to leave [their] place of habitual residence and seek refuge in another country',<sup>6</sup> the country hosting them is duty-bound to provide humanitarian aid such as food, shelter and healthcare, among other things.<sup>7</sup> If this

is looked at in terms of reduced poverty or improved economic development of refugees, it does not help much because refugees are only provided with the bare necessities of life. Such provisions cannot lift one much from the grips of poverty and refugees accordingly cannot fully develop economically since, arguably, the aid aims just to keep its beneficiaries alive. On the part of governments or organisations providing humanitarian aid in compliance with refugee and migration law, this is not sustainable since by just providing the aid they do not get financial returns from the provisions. Because of this, the providers of aid cannot achieve significant economic development and may become poor themselves. In light of this, refugee and migration law negatively affects poverty and may make efforts to improve economic development less attainable to both beneficiaries and aid providers.

As a solution to the problem, legal frameworks have to be put in place at the national and international levels to make host states obliged to provide, in addition to humanitarian aid, some financial assistance or other forms of capital to refugees in their territories. This assistance can be given in the form of loans provided to capable refugees to start businesses, who can then pay back the loans at a low interest rate. In doing this, migrants stand to be economically weaned from solely depending on aid from their host states or other aid agencies. With the gains they get from the businesses they establish, migrants can provide for themselves and their families, hence reducing the pressure on aid



providers to continue with their provisions.

On the other hand, host countries and aid agencies benefit by collecting the interest rates from the loans paid back. Poverty in this scenario is reduced on the part of the migrants and economic development is achieved by aid providers and the whole host state by collecting taxes and interest rates, which they can use to construct infrastructure that is of paramount importance in economic development, such as markets, roads, schools and hospitals, power generating plants, or any other activities that are indicative of economic development in a country. Aid providers will also be self-reliant with the financial returns they receive from the interest rates. In the process, more jobs can be created for the citizens of the host countries and more economic development is likely to result. However, least developed countries, if they do this by themselves, face challenges in terms of sourcing funds for the endeavour and this arrangement may face a lot of resistance from poor citizens of the countries trying to adopt it. So, in these cases, countries can borrow funds from developed countries or money-lending organisations such as the World Bank, and in helping the refugees, the laws they formulate must also provide for similar attention to the plight of their citizens.

Secondly, though it may be a violation of the right to economic development, some countries employ the principle of economic proscription on immigrants (refugees).<sup>8</sup> This limits immigrants' freedom to engage in economic activities, such as undertaking business activities or employment. This directly affects the poverty and economic development of the immigrants considering that, if they are denied opportunity to earn a living, they are not able to earn money they can potentially earn given the freedom to do so or be employed for pay. By being denied the right to earn a living, immigrants may become poorer or remain in poverty. This might be the case particularly for those fleeing armed conflicts in their countries of origin. They may be displaced and leave without being able to take their possessions with them and many of them when fleeing take only that fits in their pockets.<sup>9</sup> As such, their economic development is negatively affected. The right to economic activity is guaranteed by many treaties including the Universal Declaration of Human Rights 1948, Article 23 of which provides that '[e]veryone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against

unemployment'. Furthermore, Article 6(1) of the International Covenant on Economic, Social and Cultural Rights 1966 provides that:

'The States Parties to the present Covenant recognise the right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.'

With these provisions, clearly every person, regardless of the fact that they are refugees, has the right to have access to economic activities in order to earn a living, lift their lives from poverty and develop economically.

With that background, refugee and migration law can be implemented to reduce poverty and improve economic development by states following international laws to come up with local statutes and guidelines on how to increase and regulate the participation of refugees in different economic activities in their countries. Through this intervention by the host states, refugees and other migrants should be allowed the liberty to engage in any otherwise lawful economic activities they want. This can reduce poverty and improve economic development in a way that those who actually take part in business activities will be able to earn a living to help themselves and their families, hence reducing poverty. On a larger scale, the host states will benefit substantially from these arrangements in that they will be collecting revenue in the form of taxes or other levies from the refugees participating in economic activities. The money collected by the states can then be used for improvement of the hosts' economic development, for example, constructing markets where people in the states can further engage in economic activities, which may reduce their poverty levels. The revenue collected may also be used for activities such as social cash transfer programmes in order to distribute wealth to the citizenry when the citizens do some development work in their communities. The citizens may pave roads, build bridges or classroom blocks and then be paid. These pay outs can help in alleviating poverty at the grass roots level and at the same time help in improving economic development by widening the infrastructure base. There can be respect for human rights, including the right to work, if refugees are allowed to engage in economic activities. The law can be implemented in order to achieve all this by making it mandatory for all countries to allow everyone within their

territories, including refugees, to take part freely in economic activities that help in reducing poverty and improving economic development generally. As for countries that fail to comply with this and thus continue hindering the freedom of refugees from working or doing business, they should be dealt with by judicial procedure in a competent court with relevant jurisdiction for the violation of people's rights.

Thirdly, the obligations placed on the host state to take care of refugees by providing humanitarian assistance may become a big challenge for least-developed countries to balance the need to provide for their own citizens and also provide for refugees,<sup>10</sup> especially if they are not promptly assisted by other humanitarian agencies. The result expectedly is that the economic development of the host countries does not improve and poverty is perpetuated. The problem is exacerbated due to the rise in the number of migrants moving because of economic reasons.<sup>11</sup> Though the Refugee Convention 1951, as a matter of principle, does not recognise economic conditions as grounds for securing refugee status, host countries can take advantage of this rise in the number of economic migrants by recognising them as refugees. States can do this by considering the knowledge and skills or other potentials that migrants have. In this regard, the host countries would keep their expenditure on refugees down while at the same time benefiting economically from the skills refugees have. Migrants would use the knowledge and skills they have to work and hence lift themselves from poverty and also help in the economic development of the countries they settle in. One of the ways they can help in economic development of the host countries is by working and contributing to pension funds. The money in the pension funds can then be used in different development projects by the host country. As it is now, the law can be looked at as something that hinders the reduction of poverty and improvement of economic development in host countries.

The better way to go would be for states to come up with statutes or policies to provide for the granting of refugee status to people running away from their countries of origin, on condition that those to be granted refugee status have some useful knowledge and skills the host countries can use for their own economic development. Considering this can take a long time to implement, a short-term

plan for host countries as they wait to come up with pieces of legislation or policies to extend the opportunity to grant refugee status to economic migrants would be to institute a moratorium on of the guidelines that bar migration triggered by economic reasons. During the moratorium, the potential hosts would grant skilled immigrants refugee status while they also undertake research on the benefits of accepting migrants using the suggested criteria. This might be of benefit to host states in reducing poverty and raising their economic development, which might be evident in having high gross domestic product (GDP) per capita.

In addition, refugee and migration law often affects poverty negatively. To a large extent, the principles and rules are soft laws, which act only as non-binding policy guidelines.<sup>12</sup> They give room for countries to make reservations to laws like the Refugee Convention 1951.<sup>13</sup> This may lead some states to reduce their legal obligations towards refugees. It must be noted that every country has an obligation to host migrants but some countries, especially richer ones, set up barriers to prevent migrants from entering their territories. According to the *BBC*, in September 2016, rich nations such as the United Kingdom and the United States granted access to only 8,000 and 12,000 Syrian refugees respectively since 2011. China, Russia and Gulf States have accepted none. This led to an influx of refugees in countries like Jordan, with a GDP only 1.2 per cent the size of the UK's but with about 655,000 Syrian refugees and 2.7 million refugees in total.<sup>14</sup> With the election of Donald Trump as the President of the US, things might get even worse for refugees in the US because of the President-elect's proposed strict stance against migrants.<sup>15</sup> As a result of some states shirking their obligations towards migrants, there is a sharp increase in the number of refugees in countries such as Iran, Ethiopia, Kenya, Uganda, Democratic Republic of Congo and Chad,<sup>16</sup> plunging these countries deeper into poverty or preventing them from improving their economic development due to the resultant population increases. Other migrants are forced to seek refuge in countries neighbouring their countries of origin. Because of the large numbers of people who flee violence in their countries and go into neighbouring countries, poverty alleviation and economic development for

the host countries is virtually impossible. This is so since the host countries are forced to prioritise taking care of the migrants. This is often at the cost of improving their own economic development and poverty reduction.

Refugee and migration law can be implemented to reduce poverty and improve economic development by making the guidelines more stringent and compulsory so that every country should be bound to take some positive steps to help migrants and reduce the pressure on poor countries and those close to where violence is occurring and migrants are coming from.

Furthermore, there should be sanctions attached to the guidelines in cases where there is non-observance of the same. If this happens, then all countries would have refugee populations that are manageable. As a result of this approach, all countries would still be able to prioritise their policies to reduce poverty and improve their economic development, unlike re-setting their priorities to deal with a surge in refugee populations. With manageable populations, chances are high that host states' GDP per capita would increase and this would be a sign that the countries are attaining improved economic development.

Further, with respect to migration, which is often triggered by harsh economic conditions in countries of origin, strict adherence by developed countries to the 1951 Convention with the aim of preventing migrants from easily crossing borders<sup>17</sup> may perpetuate poverty in the countries of origin of the migrants. The situation would be different if countries that are more developed in a region, such as the Southern African Development Community (SADC), had treaties allowing people to cross their borders easily. This would be the case because, if allowed easy entry into developed countries, migrants would participate in economic activities in the host countries, leading to further economic development there. At the same time, these migrants would be able to send funds or goods to their countries of origin, hence reducing poverty levels and enhancing economic development in their home countries. As a way to go, countries in the same regional groupings such as SADC, ECOWAS<sup>18</sup> or even bigger groupings such as the African Union should come up with agreements that allow freedom of movement to people across member countries. Some may argue that, if there is freedom of movement between

countries, then least-developed countries will suffer a brain drain of their skilled human resources. This is true to some extent, but the 'gain that is realised from exporting such skilled workers outweighs the loss brought by their departure'.<sup>19</sup> This is the case because expatriate remittances from people who migrate in search of better economic conditions in more developed countries make up an important source of funds for the economic development of their home countries.<sup>20</sup> An example of this is the situation in which Nigerian football players employed in Malawi are taxed and their employers remit levies back to Nigeria.<sup>21</sup>

It must be pointed out that the freedom of movement proposed should be extended to allow refugees in camps to move freely out of the camps. According to United Nations High Commissioner for Refugees and the University of Oxford's Refugee Studies Centre, countries such as Malawi, Tanzania, Uganda and Zambia (particularly Malawi) have policies that confine the activities of refugees within refugee camps.<sup>22</sup> For school-going children, they have to go to schools located in the camps; likewise, workers have to find paid work or conduct small-scale businesses only within camp boundaries. To operate businesses outside the camps they are charged prohibitively high fees.<sup>23</sup> This application of refugee and migration law is bad for the reduction of poverty and the improvement of economic development as it limits the ability of the refugees to find business activities that are more lucrative. Refugee and migration law should aim at integrating refugees into local communities, allowing them to undertake all the lawful things that natives are allowed to do. Besides that, regional laws should be framed in such a way that they restrict countries from coming up with policies that confine refugees to camps.

Finally, migration legal frameworks to some extent may be seen to put too much focus on those who have fled to other countries while disregarding the needs of other equally affected people, such as those who are internally displaced and who inhabit the properties of migrants. This may be as a result of following the principles of restitution, which state that:

'whenever possible, restore the victim to the original situation before the gross violations of human rights law or serious violations of international humanitarian law occurred. Restitution includes,

as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship; return to one's place of residence, restoration of employment and return of property.<sup>24</sup>

When secondary occupiers inhabit the property, they begin to settle and make efforts to reduce their poverty levels that resulted from their own displacement. When those who emigrated return to repossess their property, the efforts of the secondary occupiers are affected negatively as they are, for example, in the case Burundi, forced to share the pieces of land with the returnees hence they end up losing part of their wealth.<sup>25</sup> The result is obviously that they are to some extent pushed into poverty: their economic development is adversely effected.

On this the law can be used by taking into account all the interests of people affected by ensuring that property rights are enforced fairly with the aim of causing minimal inconvenience to concerned parties. For example, the law could establish that secondary occupiers should not be evicted from the property they found and that those who return home should be provided with other similar properties elsewhere, or else a premises should be provided for the secondary occupiers while the returnees reclaim their property. In this scenario, all affected parties will surely be satisfied with the results the law would produce, hence they would freely engage in poverty alleviation activities resulting in the economic development both for themselves and their countries.

In conclusion, this essay has discussed how refugee and migration law affects poverty and economic development. It has been shown that, to a large extent, the law as it is affects poverty and economic development negatively. For this reason, suggestions have been made as to how the law can be implemented with the aim of reducing poverty and improving economic development. The effects of the law and how it can be implemented have been looked at both with focus on the country of origin of the migrants and the host state, and in terms of individuals and society in general. It is the view of this discussion that the law can be used properly to reduce poverty and improve economic development, although there might be challenges.

#### Notes

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# How does refugee and migration law affect poverty and economic development? How can it be implemented to reduce poverty and to improve economic development?

## Introduction

Refugee and migration laws are unique in the way they affect poverty and economic growth. This can be shown to be both positive and negative.<sup>1</sup> This essay seeks to discuss how refugee and migration law affect poverty and economic development. The essay will also explain how these laws can be implemented to reduce poverty and improve economic development.

This essay will first show how refugee law affects poverty and economic development. It then proceeds to argue how migration law affects poverty and economic development. Lastly, the essay will evaluate how the two laws can be implemented to reduce poverty and improve economic development and a conclusion will be drawn.

## The impacts of refugee law on poverty and economic development

States hold extensive powers to regulate the movement of foreign nationals across their borders.<sup>2</sup> However, the powers and discretion of states are not absolute if they have ratified or further domesticated international treaties. There is a great responsibility among states to share in terms of assistance and finding solutions for people who cannot rely on their governments. This inter-dependence among states is strengthened by refugee law as established, mainly, in the 1951 United Nations Convention Relating to the Status of Refugees (CRSR).

Article 1 of the CRSR defines a refugee as:

‘Any person who for 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.’<sup>3</sup>

The above article shows that, to gain refugee status, one has to meet the above criteria. This means that, if a foreigner is not in any of the situations as stated above, he or she will not qualify for refugee status. It is important to obtain refugee status to enjoy the (limited) benefits of being a refugee, including protection from the contracting state and the international community. The definition in this law has affected poverty and economic growth negatively, because the ‘refugee’ definition is narrow. People who might genuinely need help but fall outside the definition are not protected by the definition. This leaves other people who need help in a deserted situation, thereby increasing poverty levels and reducing economic growth in affected areas.

Obtaining refugee status, however, encourages people to flood to the destination country. When the population of the destination country increases, the demand on food and health services becomes high against the available resources. According to the refugee response plan for the Central African Republic, there is continuous

pressure on the resources and services of the hosting areas.<sup>4</sup> Agro-pastoral conflicts and competition of sufficient access to water, health, educational services and firewood often creates conflicts between the host communities and refugees.<sup>5</sup> This eventually puts pressure on the destination countries to provide for the additional people. For instance, Chad has not yet included refugees in its national development plan and this remains an impediment for its social-economic integration.<sup>6</sup>

Positively, refugee status requirements prevent exploitative individuals from taking advantage of refugee protections. Policies put forward by the UN as well as destination countries to restrict asylum ensure order and security in the contracted state<sup>7</sup> as well as peaceful coexistence between the host country and refugees.<sup>8</sup> However, it is difficult to monitor asylum procedures as well as refugee status determinations. There is no proper registration to provide for reliable figures and information on refugees needs to be tailored for any type of refugee assistance, including persons with special needs.<sup>9</sup>

It is important to document and register refugees who are granted asylum by the hosting state. Registration can help identify people who need specific assistance. This can help these kinds of refugees to be productive and to contribute positively to their host community. In Cameroon, about 35,000 people with specific needs were identified.<sup>10</sup> These people were given access to medical care, psychological counselling and legal aid, to ensure multi-sectorial assistance.<sup>11</sup>

The CRSR in Article 17 gives a refugee equal rights to employment as nationals of a foreign country.<sup>12</sup> In the long run, when refugees are empowered with employment, the government would actually tax these people higher than the citizens of the contracting state. This could significantly raise the economy and reduce poverty in the destination state.

According to Article 22 of the CRSR, refugees are to be accorded the same treatment as nationals with regards to elementary public education. Beyond elementary education, contracting states shall not accord less favourable treatment than that given to aliens, in particular relating to access to studies, recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges, and the award of scholarships.<sup>13</sup>

If nationals get free access to elementary

education, it means refugees would also get free elementary education. However, this is not the same when it comes to tertiary education. Refugees have to pay extra sums of money compared to nationals. This could be beneficial to the host country in the short-term but not for the refugees themselves. Most refugees end up having only elementary education because they cannot afford the tuition fees for tertiary education. When this happens, it means even the state will not benefit from them in the long run because they will have no professional skills to offer, so that they take up employment opportunities. This could really be fatal for economic growth.

### Impacts of migration law on poverty and economic growth

Migration is a powerful source of social change and cultural interaction in implicated countries. It provides migrants with significant opportunities to progress.<sup>14</sup> It is also a factor that has developmental effects on both the host and the country of origin.<sup>15</sup> The Universal Declaration of Human Rights in its Article 13 states that everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country.<sup>16</sup> This right is fundamental, and the law makes it easy for one to leave a country for another without restraint, provided one has the proper documentation to relocate.

The right to movement, however, comes with merits and demerits. Significantly, people are pushed to migrate for many reasons. One of these reasons is to search for employment in countries that can pay more than their own (income differential). Migration law protects these sorts of people from any form of discrimination and degrading treatment.<sup>17</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is one such instrument. Article 7 of the Convention provides that:

‘States Parties undertake... to respect and to ensure to all migrant workers and their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, color, language, language, religion or conviction, political or other opinion, ethnic, national or social origin,

nationality, age, economic position... or other status.<sup>18</sup>

The Article above shows how migration law can promote economic growth. This is by demanding that migrant workers be treated in an impartial manner as any person in a particular country that is a signatory to the instrument. This indifference, the Article claims, makes it easier for migrants to work to their very best. When the migrants are helped to maximise their potential freely, it means they will contribute positively to the economies of both the host country through tax as well as their home country through remittances.<sup>19</sup> This means they contribute to the financing of public infrastructure, although admittedly to a lesser extent than those who are native born.<sup>20</sup>

Zohry's statistics on migration and development in Egypt show that the upper part of Egypt has generated a continuous migration flow.<sup>21</sup> The flow supplies a reasonable amount of semi-skilled labourers and technology transfer, not only to the local market but also neighbouring countries. This, in turn, influences industrialisation, trade and commerce with the rest of the world.<sup>22</sup> This example still affirms the positive impact that migration law has on poverty and economic growth.

Migration law liberates individuals' ability to move and migrate abroad. However, in Egypt for example, laws relating to investment and attracting established Egyptians abroad to invest in Egypt are not encouraged.<sup>23</sup> This affects economic growth negatively in Egypt because investments are not encouraged and tax money for Egyptian investors remain outside the country.

Migration law is also responsible for poor countries losing highly skilled persons to rich countries (brain drain). The huge amounts of money used to educate doctors or engineers, for example, disappear after they take their skills abroad.<sup>24</sup> This can be bad for the sending country in that, when these people with skills leave the country, it will be costly for the government. They would have to find highly skilled workers from abroad to offer the exact services that their own citizens could have performed less expensively. This could really be bad for the economy of the sending country.

### Possible implementations for both refugee and migration law

#### *Migration law*

- States should have formal instruments on migration policies. These policies should

aim at encouraging emigration to ensure equilibrium in the domestic labour market. The policies should also aim to fight illegal migration, maximising economic benefits of migration and increasing migrants' remittances. Finally, meet labour demands in receiving countries.<sup>25</sup>

- Each state should have a ministry that aims at protecting migrants from racial discrimination, and protecting the rights and dignity of their citizens abroad, in full respect of the laws of hosting countries. The ministry should also cooperate with different bodies to fight illegal migration through joint technical, security, judicial and legislative mechanisms.<sup>26</sup>
- States should make it compulsory to have pre-departure orientation and skills training for migrants. This sensitisation could aid in the fight against illegal migration. This has worked for Egypt as they have even encrypted this in their Migration Law, in Article 5.<sup>27</sup>
- States should pass laws that could encourage investments in their countries, and states with such laws already should reinforce them.

#### *Refugee law*

- The 'refugee' definition is quite narrow. The convention relating to the status of refugees and other instruments need to be amended to cover a wide range of situations and qualities. This will be quite helpful, as a number of people would qualify for refugee protection.
- Countries that have not yet included refugees in their national development plan have to do so to ensure smooth socio-economic integration between the host community and refugees. Chad is an example of a country that has not included refugees in their national development plan.<sup>28</sup>
- In as much as refugee registration is important, the most important need for refugees is a fair and functioning asylum system. However, the documentation process needs to be shortened. There are approximately 65,000 recognised refugees in South Africa. Many of them have been there for years. In addition, at the end of 2013, there were 230,000 asylum seekers awaiting decision.<sup>29</sup> Thus, employing more people to help with the process would be helpful.
- Policies relating to educating refugees at tertiary level should be relaxed to be the same as nationals. This is to enable a

large number of refugees access to tertiary education with ease.

- Technical assistance from the UNHCR and other donors should continue to ensure that refugees and asylum seekers are not left vulnerable.

### Conclusion

The inter-dependence between states makes it possible for migration to take place smoothly. Both refugee and migration law have been shown to have positive as well as negative effects on economic growth and poverty. For instance, the asylum system is overwhelmed. Large numbers of applications take too long to be processed, leading to refugees being left without protection and prone to abuse. Additionally, some countries like Chad have not included refugees in their national development plan and this becomes a problem when it comes to socio-economic integration. Migration law is shown to be the reason why brain drain is possible: by exercising the 'right to movement', poor countries lose skilled people. The law should aim at insuring that migrants and refugees are given a fair opportunity to become self-reliant, through engaging in business and education without restraint.

### Notes

- 1 T Alexander Aleinikoff, 'International Legal Norms and Migration: A Report', in T A Aleinikoff and V Chetail, (eds) *Migration and International Legal Norms*, (Asser Press 2003), p 2.
- 2 David Martin, 'The Authority and Responsibility of states', in T A Aleinikoff and V Chetail, (eds) *Migration and International legal Norms (Asser Press 2003)*, pp 31–45.
- 3 Convention Relating to the Status of Refugees (adopted 28 July 1951), Art 1.
- 4 Regional refugee response plan – Central African Republic, January – December 2016.
- 5 *Ibid.*
- 6 *Ibid.*
- 7 See n 3 above, Art 33.
- 8 See n 4 above.
- 9 *Ibid.*
- 10 *Ibid.*
- 11 *Ibid.*
- 12 See n 3 above, Art 17.
- 13 *Ibid.*, Art 22.
- 14 Karen E Young, 'Refugee Crisis and Economic Migration: Regional Economic interdependence and the Arab Gulf States' Issue paper 7, 2015, pp 1–3.
- 15 *Ibid.*, p 3.
- 16 Universal Declaration of Human Rights (proclaimed 10 December 1948), Art 17.
- 17 *Ibid.*, Art 10.
- 18 International Convention on the Protection of the Rights of All Migrant Workers and Their Families, (adopted 18 December 1990) Art 7.
- 19 OECD Migrant Policy debates, [www.oecd.org/migration](http://www.oecd.org/migration) accessed 25 October 2016.
- 20 *Ibid.*
- 21 Ayman Zohry, *Migration and Development in Egypt*, Paper Prepared For Project on Migration as a Potential and Risk Funder by Robert Bosch Foundation Institute for Migration and Cultural Studies (IMIS) Osnabruck University, 16–17 December 2007, p 31.
- 22 *Ibid.*
- 23 *Ibid.*
- 24 *Ibid.*, p 50.
- 25 *Ibid.*, p 56.
- 26 *Ibid.*, 51.
- 27 *Ibid.*
- 28 See n 4 above.
- 29 UNHCR Global Appeal update 2015 on South Africa