Symposium Introduction: The Right to Development and Migration

By:

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Historian and political philosopher Achile Mbembe in his essay "*bodies as borders*" argues that the "management of human mobility" is "a key issue of the 21st century." Indeed since the turn of the century, we see a proliferation of bilateral and multilateral migration "management" frameworks. A common theme across these frameworks is the framing of migration as a "problem" driven by "push-pull factors." One of the main ways of curing this problem according to this framing, therefore, is by addressing the "root causes" of migration through development investments in potential migrant origin or transit countries, especially located in the Global South. Examples of development-migration nexus frameworks and pacts include the EU Trust Fund for Africa "for stability and addressing root causes of irregular migration and displaced persons in Africa" (EUTF for Africa), a recent EU-Tunisia "deal" to fight "irregular migration," and the Los Angeles Declaration "addressing migration and displacement governance in the Americas."

At the global level, two separate global compacts (for migration and refugees) were adopted in 2018. While both compacts are comprehensive, the idea of deploying development (including through private sector engagement) to address drivers of migration and refugee movements forms a key aspect of these frameworks. One of the objectives of the Global Compact for Safe, Orderly and Regular Migration (GCM) is, for instance, to "minimize the adverse drivers and structural factors that compel people to leave their country of origin" (GCM Objective 2).

Noticeably, the global discourse on migration is intertwined with "development," a notion which itself raises important questions. Which conception of "development" are we referring to? Is development defined in terms of improvement of the general economic situation of potential migrant origin locations? Or does it have to do with the "potential" migrants ("potential" because development here preempts the departure of migrants)? You may also think of many more questions. It is thus no wonder the development-migration nexus facing growing scrutiny, both empirically and normatively.

A recent theory by Hein de Haas (2021), the "aspirations and capabilities" framework, conceptualizes migration as a function of individual aspirations and capabilities. Accordingly, more economic development in potential migrant origin locations does not necessarily lead to less migration. For instance, with more economic development people will be availed with better infrastructure (such as transportation networks or financial resources), which in turn enhances capabilities to be mobile. But not everyone capable of migrating will leave. There should as well be an aspiration to do so. Ultimately, therefore, migration becomes about an individual decision-making, a function of aspirations and capabilities down at the level of the individual. In this sense, the other critique by de Haas is that mainstream "push-pull factors" approaches neglect individual agency. This is in line with the articulation of "development as freedom" by Amartya Sen (1999). According to Sen, development is meant to expand the capabilities and functionalities of individuals – and not to constrain their freedoms. There is also a recent turn in the migration literature calling for a departure from preoccupation with why people migrate (focusing on people with "migrant" status) but also on the immobility dimension [e.g. deciding to stay (to not migrate) as an expression of agency]. As de Haas also argues, those who decide to stay put are also exercising their migratory

agency. As such, all of us are potential migrants, so to say.

The possibility of multiple conceptions of development (such as Sen's "development as freedom" and the framing of *development as a right* of both individuals and groups in international human rights law) puts into question the narrative of "using development" as a response to address the "problem" of migration, i.e., to keep aspiring migrants "in their place." The focus on agency also requires us to look beyond the mere instrumental role of migration for national economic development (e.g. through remittances for origin countries or as labour force for destination countries). In fact, the overall objective of the Global Compact for Migration *is to facilitate migration that is safe, orderly, and regular*. Combined with a commitment by States t*o create conditions for individuals to fulfil their aspirations in their countries of origin*, it opens the possibility of reframing the nexus between development and migration in terms of the rights language. It is thus possible to argue that if States have committed to make sure that individuals fulfil their aspirations in their locations of origin, then in the absence of such environment an obligation arises upon such States to facilitate migration. Migration in its nexus with development thus entails a freedom, not the otherwise. If development is about expanding the capabilities of individuals, then migration should be viewed as an expression of the right to development.

Along this line of thinking, this symposium is intended to stimulate further debate and discussion on the development-migration nexus, particularly when development is framed as an enterprise of expanding the freedoms of its rightsholders – individuals and groups. The symposium brings together four contributions by four distinguished authors. The contributions articulate both the potential and pitfalls of the aspirations/capabilities model of the nexus and highlight particularities when the framing is applied together with other layers (gender, climate crisis, refugees). Two of the contributions discuss their topic using the term "migration" while others look into the issue in the context of "refugees." Notwithstanding the importance of the distinction between "migrants" and "refugees" in current global frameworks, the purpose here is to stimulate debate that goes beyond this fluid dichotomy. In popular parlance, the term "refugees" is used to connote "migrants" or "non-citizens" in general.

The symposium begins with Justyna Hejman-Mancewicz's contribution – "Migration-development nexus through a gender lens" – in which she argues that the aspirations-capabilities framework becomes even more relevant when acknowledging the highly gendered nature of migration (including in its immobility conception). Justyna's work sheds light on how deeply gendered the mainstream "push-pull factors" migration theories are, and even more so when explaining the South-North migration of women. Her work eloquently shows that migrant women still tend to be largely seen as "passive followers." The tendency to frame female migration through the lens of exploitation overshadows the much-needed focus on their agency, she argues.

Importantly, Justyna highlights how a preoccupation only with economic factors in mainstream nexus approaches ignores not only dimensions related to agency and aspirations of women but also other key factors such as the reality of gender discrimination that play a critical role in women's decision-making related to migration/staying. She also discusses whether development in turn lowers gender discrimination so that women could achieve their aspirations in their countries of origin. She concludes that the nexus discourse should equally revisit people's staying preferences and aspirations.

Mainstream discourses assume that one key driver of migration is climate change, which then frames migration as an unfortunate outcome. In continuation of the symposium, **Manele Mpofu** challenges this very topic. In his contribution, "**Migration: A Force for Resilience and Broad Positive Social Change within and beyond the 'Global South' amid the Climate Crisis**?" Manele discusses Sen's capabilities framework as applied to the climate change-migration nexus. His discussion positions migration as rather a way of enhancing the "overall adaptive capacity of communities." At the same time, he cautions that the framing of migration as adaptation should not overlook the need to "mitigate the climate crisis at its source." Such framing should not leave the burden of adaptation to the most vulnerable populations themselves.

Manele situates this point in a broader call for a decolonial approach to understanding the nexus between climate change and migration. By doing so, he emphasizes the need for balance and for looking into more structural and systemic issues, for which migration alone (even in its positive framing as an

expression of personal empowerment) cannot be a panacea. Manele's contribution on a cautious and nuanced view of migration as adaptation and migration as development concludes: "Addressing climate migration requires a comprehensive, rights-based approach that recognises the agency of migrants while also tackling the root causes of forced displacement."

Next, **Anubhav Dutt Tiwari** asks: "**Is it possible to retheorize 'dignity' and human development through refugees**?" Anubhav applies the capability approach in particular Martha Nussbaum's notion of human dignity to challenge the very distinction between "refugees" and citizens of the nation State. He persuasively shows that current global refugee law (as exemplified by the 1951 Refugee Convention and the right to seek asylum under the Universal Declaration of Human Rights (UDHR)) is based on the idea of temporariness of refugee protection. Drawing from the Kantian notion of hospitality and others, he posits that this idea leaves the "refugee" somewhere between the human and the citizen. In this sense, hospitality is not about charity but a right. But the claim for such a right is for bare survival, not for the full range of rights that citizens enjoy. This also entails the emergence of a hierarchy of rights with persecution conceived as "grave violations of first-generation rights but not economic, social and cultural," he adds.

Nussbaum's approach is based on a list of essential capbalities. These capabilities are meant to bestow entitlements to anyone irrespective of differences. Anubhav argues that the adoption of the Global Compact on Refugees is aligned with Nussbaum's capabilities approach as applied to refugees. Nussbaum's approach and her focus away from the Kantian notion of hospitality paves the way for refugees and non-citizens an adequate legal claim to seek protection and secure conditions of human flourishing, Anubhav concludes.

The symposium concludes with **Pablo Pastor Vidal** writing on "'***Innovative Finance' for Refugees? Self-reliance, Resilience and the Humanitarian-Development Nexus***. One of the objectives of the 2018 Global Compact on Refugees (GCR) is to "enhance refugee self-reliance." With a focus on integration of refugees and host communities and other durable solutions, the GCR is considered to be ushering an era of departure from a hitherto humanitarian approach to refugees to a development model. Pablo's

contribution takes a critical look at the notion of self-reliance and the humanitarian-development nexus model of financing in refugee contexts. Pablo shows how the increase in the number, complexity, and duration of refugee situations around the world gradually rendered the initial short-term focus of the framework untenable. A humanitarian-development nexus model emerges to bridge the gap between short-term humanitarian and longer-term development dimensions of refugee situations, he observes.

Pablo further observes a departure from the original positive framing of resilience and self-reliance. Initially, the framing meant moving away from framing refugees as “vulnerable.” The notion of refugee self-reliance in its current use however has acquired a neoliberal meaning in the notion of “resilience humanitarianism” and the search for “innovative solutions” to protracted refugee situations. This has meant the involvement of more private sector investment. This trend has to be seen cautiously, Pablo argues. In particular, the model should not be deployed as an easy alternative to more and more Global North countries becoming unwilling to allocate more resources and rather “seek to make refugees and local communities themselves become the first aid responders,” Pablo concludes.

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Manele Mpofu is a social justice lawyer based in Harare, Zimbabwe. Manele has a strong commitment to reducing inequality through empowering marginalised communities, and he uses his extensive legal experience to promote transformative change throughout Zimbabwe. In his capacity as a legal officer, Manele is essential in assisting communities in seeking redress and establishing sound practices for the effective governance of natural resources, which includes the advancement of climate change related laws and policies.

Anubhav Dutt Tiwari (PhD) is an Assistant Professor of Law at BITS Law School and has also taught at Jindal Global Law School. He has previously worked at O.P. Jindal Global University's Centre for Human Rights Studies and at Clasis Law in New Delhi as a corporate legal associate. His primary research areas are constitutional law, refugee and migration studies, law and technology, criminal law, public international law, and law and society; and he is widely published in reputable journals. Anubhav earned his Ph.D. from the Faculty of Law of Monash University (Australia), LL.M. from the University of Essex (UK), and B.A. LL.B. (Hons.) from the National University of Juridical Sciences (India).

Pablo Pastor Vidal is a PhD candidate in Human Rights in Lund University, Faculty of Law as part of the Refugee Finance (REF-FIN: Histories, Frameworks, Practices) project. His dissertation focuses on the crisis of funding affecting humanitarian organizations. Pablo received a Double Bachelor's in Law and Political Science from Universidad Carlos III de Madrid, and a M.A. in European Interdisciplinary Studies from the College of Europe in Natolin.

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