POVERTY-INDUCED CROSS BORDER MIGRATION: SOCIO-ECONOMIC RIGHTS AND INTERNATIONAL SOLIDARITY

DANIELA DEBONO

Introduction

“...asylum-seekers are mere ‘economic migrants’. This phrase...serves to convey that the motives of those claiming asylum are trivial and unworthy...But of course to describe anyone’s motive for seeking refuge in a country not his own as ‘economic’ does not entail that it is so trifling. In his own country he may be unable to feed his family; he may have seen his children die from malnutrition. It needs only a moment’s thought to realise that flight for economic reasons may be as justified and as worthy of sympathy and help as flight from political persecution; but so conditioned has the British public become by unvaried official propaganda against asylum-seekers that it never spares a moment to think about the question.” (Dummit, 2001: 44-45)

This quote captures the typical current discourse on asylum and migration at local, national, regional and international levels. The economic migrant usually brings negative images to mind - a ‘bogus’ migrant, hypocritical and unworthy of assistance. This has been brought about by a number of factors in the global political and socio-economic scenario.

International migration is on the rise. In 2006, there were 191 million international migrants in the world, up from 176 million in 2000. International migrants represented 3.0% of the world population in 2006. There are roughly 30 to 40 million unauthorized migrants worldwide, comprising around 15% to 20% of the world’s immigrant stock, and another 24.5 million internally displaced persons (IDPs) in at least 52 countries. In 2006, the official global number of refugees according to the International Organisation of Migration (IOM) reached an estimated 9.9 million persons.

At the same time, nearly three billion people, a figure that makes up nearly half the world population, live on less than two dollars a day. More than 80% of the world’s population lives in countries where income differentials are widening. In fact, the poorest 40% of the world’s population accounts for 5% of global income, while the richest 20% accounts for three-quarters of the world income. Another chilling statistic is that issued by UNICEF, which reports that some 26,500-30,000 of children under the age of 5 die each day due to poverty. And they “die quietly in some of the poorest villages on earth, far removed from the scrutiny and the conscience of the world. Being meek and weak in life makes these dying multitudes even more invisible in death.” (UNICEF, 2000)

Substantial numbers of people have thus migrated - or sought to migrate - from regions that are afflicted by poverty and insecurity to more prosperous and stable parts of the world. People who have been forced to migrate often face increasingly tortuous and dangerous long-distance journeys. These migrants have been prompted and their travelling has been facilitated by a variety of factors associated with the process of globalization: a growing disparity in the level of human security present in different parts of the world; improved transportation, communications and information technology systems; the expansion of transnational social networks; and the emergence of a commercial and criminal industry, devoted to the smuggling of people across international borders.

---

4 This method of calculation has been highly criticized over the years. For the sake of this paper, it helps to give a rough indication of the number of people and the kind of poverty that we are speaking about. UNDP, 2007 Human Development Report, November 27th, 2007.
Some of these forced migrants fall under the current interpretation of the 1951 refugee definition and are deemed ‘deserving’ of protection by the host state. All the rest are not.

Migrants fleeing conditions of socio-economic deprivation, or more simply poverty, usually fall within this ‘undeserving’ category. The derogatory attitude towards them persists in European countries: their asylum claims are found ineligible and assistance is not extended to them. This state of affairs prompts the question as to whether there is any ethical justification for this.

Who are cross-border poverty-induced migrants? People who move to another country (flee poverty) or socio-economic deprivation are usually classified under the umbrella category of economic migrants. The term ‘economic migrants’ refers to a spectrum of people migrating to another country in order to improve their quality of life. This includes North-North migration, like British academics moving to the United States; South-North migration, for instance Ghanaian doctors moving to the United Kingdom; and South-South migration, like a Bangladeshi labourer moving to India. It is a popularly known fact that economic migrants can be either skilled or unskilled. Less well known is that economic migration involves both forced and voluntary migration. William Wood discusses this distinction at length and, amongst other things he reasserts that, contrary to public belief, refugees and asylum seekers represent only a small fraction of those persons who flee their communities - what he calls ‘non-voluntary’ (i.e. forced) migrations. He remarks that:

“The extent of forced migration is underestimated, however, because the conventional definition of refugees as victims of coercive government policies or war who cross an international boundary fails to account for the many others uprooted by communal ethnic conflict, life threatening environmental and economic conditions and mandatory repatriations.” (Wood, 1994)

A good definition of socio-economically deprived migrants which refers precisely to the group of people that will be the focus of this paper is Huyck and Bouvier’s definition of ‘economically motivated refugees’, which describes those migrants who are incapable in their own country to locate any kind of employment or to grow sufficient agricultural products to feed and house oneself and one’s immediate family. Starvation in this case becomes the likely alternative to emigration.” (Huyck and Bouvier, 1983:41)

Many socio-economically deprived migrants who are forced to migrate are constrained by tightened legal restrictions on their mobility and thus end up using illegal channels of travel. Western countries have immigration policies that regulate the supply of labour in accordance with the needs in their economic sectors. Reductions in the numbers of ‘legal’ jobs for migrant workers coupled with rising fears of increased illegal immigration has led to tougher immigration policies, more border patrols and quicker deportations. These measures often make it difficult for socio-economically deprived migrants to get a visa or passport. They often end up crossing the borders illegally in areas like the United States and Mexico border, at the Strait of Gibraltar and from Libya to Italy. This is often a very dangerous journey. Yet, illegal channels are at times more accessible, or are perceived as more accessible than legal channels. One of the main reasons for this is the likelihood of failure linked to legal channels. Other reasons are the complexities, costs and uncertainties in the bureaucratic process of the latter. For instance, applications for visas to Western countries from developing countries are often turned down, and for some of these migrants the costly prices of visa applications and flight tickets are a definite setback.

A popular argument in Western countries to justify the negative treatment of economic migrants rests on the claim that by resorting to illegal channels the migrants expose themselves to an attitude of hostility. These arguments ignore the fact that illegal channels may well be the only channels to which these migrants have access. Socio-economically deprived migrants are thus more likely to be migrants who attempt to enter a country without the necessary documentation.

---

6 Several have criticized the ‘limited’ nature of the 1951 Refugee Convention in the current realities of the world today.
7 Though people classified as ‘vulnerable people’, including minors, disabled people, and others (according to each state’s policy), are usually offered some sort of protection by States.
Another criticism is that any arguments asserting that people are forced to migrate due to poverty are naive and over-romanticise poverty situations and migration to an extent which is unrealistic, since many scholars have shown that the ‘poorest of the poor’ are less likely to migrate as they have less access to resources and information. Such assertions have also contributed towards the negative portrayal of socio-economically deprived migrants. What these arguments fail to recognize is that poverty situations can be diverse and include a range of deprivations. So while those who migrate might not necessarily be the ones under the imminent threat of starving to death, their situation remains nonetheless one of poverty.

Finally, it is generally accepted that inequality is one of the drivers of migration. The widening of the North-South divide has brought predictions that this kind of migration is set at least to continue, if not to increase. In this scenario, the current derogatory discourse coupled with a simplistic view of ‘who’ these people are, and ‘what’ their motivations are, will not help in building a just and fair rights-based system.

I will attempt to show how using a narrow and oversimplified definition of economic migration reinforces the model that gives priority to civil and political rights over social, economic and cultural rights. This subsequently leads to a situation where it is perceived that individuals need protection from other states only when their civil and political rights are threatened. I will argue that this model is:

a) not rights-based and as such is hindering the development of a human rights culture (which goes against the same spirit and principles of the Refugee Convention itself);

b) that there exists a moral obligation towards people whose social and economic rights are not being respected by their State.

It should be pointed out that the aim of this paper is not to propose policies or forward any practical recommendations, but rather to expose current inconsistencies in perceptions and discourse on people who migrate due to poverty. These are the same perceptions which feed attitudes and policies. The paper will focus on human rights and the related ethical considerations necessary for ensuring consistency in policy making and social justice with all.

The Definition of a Refugee

In common parlance, the term ‘refugee’ has been extended to include all people forced to flee their homes even if they have not crossed international boundaries. This use of the word ‘refugee’ in public discourse has, at times, also been reflected in some Western states’ practices. But what are the legal definitions of a refugee within refugee law – that is, who are the people who are considered in need of ‘political protection’ and deemed deserving of inclusion (albeit within limits) into our societies?

The UN’s definition of a refugee is substantially different from the abovementioned popular definition. The mostly widely used definition can be found in Article 1 of the UN Convention related to the Status of Refugees as amended by the 1967 Protocol:

"A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; 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."

8 In 1991, Western states gave assistance to Kurdish refugees in Iraq. Even the UNHCR (amidst criticism) has gradually expanded its mandate to include protecting and providing humanitarian assistance to what it describes as other persons “of concern,” including internally-displaced persons (IDPs) who would fit the legal definition of a refugee under the 1951 Refugee Convention and 1967 Protocol, the 1969 Organization for African Unity Convention, or some other treaty if they left their country, but who presently remain in their country of origin. UNHCR thus has missions in Colombia, Democratic Republic of the Congo, Serbia and Montenegro and Côte d'Ivoire to assist and provide services to IDPs.
The UN Refugee Convention is the only world-wide international instrument currently in force, even though refugee law also encompasses customary law, peremptory norms and a number of regional agreements and conventions. Apart from the 1951 UN Convention, the relevant regional instruments to date include:

a) 1966 Bangkok Principles on Status and Treatment of Refugees adopted at the Asian-African Legal Consultative Committee;
b) 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa;
c) 1984 Cartagena Declaration on Refugees for Latin America;
d) 1976 Council of Europe’s Recommendation 773 (1976) on the Situation of de facto Refugees;
e) 2004 European Union’s Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and content of the protection granted.

In recent years, the UN’s definition has been criticized for being too narrow in scope and for reflecting the post World War II political scenario and in particular the Western states’ fear of totalitarian regimes at the time of its drafting. Much cited by many scholars, as an extended and more adequate definition, is the Organisation of African Unity’s (OAU) definition of the term ‘refugee’. The OAU has adapted the UN Refugee definition “to conform with the tenets of humanitarianism, as well as the dictates of pragmatism” (Arboleda, 1991). Articles (1) and (2) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, state that:

“I. For the purposes of this Convention, the term "refugee" shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, 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.

2. The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”

This definition broke away from the UN refugee definition by extending protection to all persons compelled to flee across national borders by reason of any man-made disaster. Some have just seen this as a successful adaptation of an international definition to the particular reality of developing countries. However, it is now widely cited as a much-needed development to the UN definition in order to address the current global realities.

Another landmark for the development of the refugee definition was another regional Declaration called the 1984 Cartagena Declaration on Refugees which was born out of Latin American states’ experience with refugees, and with people fleeing from general violence and oppression. This Declaration was extended more expansively to include:

“persons who had fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights...”

Understanding the rationale behind the legal definition of refugee and its historical roots is important to appreciate who, today, is eligible for protection from another state. The historical roots are usually traced back to the concept of ‘sanctuary’, recognised by the ancient Greeks and Egyptians; the right to asylum, first codified in law in 600 A.D. by King Ethelbert of Kent; the advent of state sovereignty (and later nationalism) made the phrase ‘country of nationality’ meaningful and people crossing borders were required to provide identification. It was, however, only under the League of Nations that the modern refugee regime, and the provision of international protection to refugees, was constructed. The baggage that the concept of asylum carried along with it has a long history. This has clearly affected the current concept of asylum and the moral obligation we have towards people fleeing political persecution.
This brief overview of the origins of the definition of a refugee is also important to understand how in recent years we have witnessed a greater acknowledgement of the fact that the categorization of forced migration (vis-à-vis voluntary migration) does not exclusively refer to migrants who have fled for political reasons. Forced migration can also encompass other groups of migrants, including socio-economically deprived migrants and, more recently, ‘climate change’ or ‘environmental’ migrants. In a speech entitled ‘New challenges of forced displacement’, the UN High Commissioner for Refugees, António Guterres, when referring to the multitude of claims for asylum, reiterates the prevalent view on why a recurring proposal of re-drafting the UN Refugee Convention should not be considered. He says,

“It is sometimes suggested that the 1951 Refugee Convention should be amended to deal with this problem. I am reluctant to consider this, for if we were to re-open a discussion about that Convention, I am not convinced it would go in the right direction. I often wonder what would happen if we were drafting the International Declaration of Human Rights today?

I would suggest we not touch the 1951 Convention, but consider instead that in addition to refugees, there are other people who need protection, assistance and solutions. I believe that we can find a way to do this using the existing framework of human rights law and international humanitarian law, coupled with more cooperation among governments, the United Nations, the Red Cross and Red Crescent movement, and non-governmental organizations. The possibility of a new international instrument for the protection of forcibly displaced people who are not refugees should also be considered.” (Guterres, 2008)

A second proposal, which many have been supporting and advocating, is that of working on the reinterpretation of the UN Refugee Convention. This proposal similarly stems from the new range of refugee claims which not only challenge the boundaries of the UN Refugee Convention regime but also question the traditional distinctions between ‘economic migrants’ and ‘political refugees’. It has also predisposed a new understanding of the responsibility of governments (and the international community) to ensure the best possible economic environment for sustainable livelihoods. One of the foremost advocates of this position is Michelle Foster, an expert in international refugee and human rights law, who argues that notwithstanding the dichotomy between ‘economic migrants’ and ‘political refugees’, the Refugee Convention is capable of accommodating a more complex analysis. The analysis she undertakes results in the recognition that many claims based on socio-economic deprivation are given due consideration within the scope of the UN Refugee Convention. She thus maintains that the challenges presented by claims based on socio-economic deprivation may be overcome by a creative interpretation of the Refugee Convention consistent with correct principles of international treaty interpretation (Foster, 2007). It is too early to note the reception of this idea or report any developments.

In the light of the centrality of the refugee regime, it is pertinent to next assess the role this regime may have played in the negative construction of the ‘economic migrant’ in Western States. More specifically, in consideration of the fact that the application of the UN legal definition excludes people fleeing for reasons other than political ones, one should carefully ask whether the refugee regime is including economic migrants in its protection discourse.

A Critique of the Refugee Regime Vis-À-Vis Socio-Economically Deprived Migrants

In recent years, following the tightening of visa controls resulting from an increased fear of irregular migration and international terrorism, the asylum system gradually became one of the last remaining ports of call for migrants from less developed countries who wanted to regularize their position in another state. This led to a situation where the asylum systems were faced with claims for asylum for a variety of reasons, many of which were related to socio-economic deprivation in the migrants’ country of origin. The capacity of the asylum system was stretched to the full, bringing about a situation where people who were claiming political persecution, and were therefore entitled to asylum under the current legal framework, were ‘lost’ in

---

9 The claim for family reunification opens another avenue for legal migration. The principle of family reunification is embodied in a set of laws which attempt to balance the right of a family to live together, or the right of an individual to marry whoever s/he chooses, with the country’s immigration laws.
mixed migration flows. This anomalous situation made it more difficult for the authorities to establish who of those migrants were eligible under the current laws. As the numbers continue to grow, potential refugees who today end up using illegal channels together with socio-economically deprived migrants and other groups are also subjected to administrative measures like detention in the countries of destination. They also face the lack of opportunities to apply for asylum and in some cases they are forcefully deported to third countries or countries of origin. Some have lamented that the refugee channel has been ‘hijacked’ by other migrants to the detriment of the ‘real’ refugees. These may partially explain why the refugee/asylum field adopts a protectionist attitude towards persons who are politically-persecuted in an effort to safeguard the present asylum system. As a result, the issues concerning socio-economically deprived migrants end up being further marginalised.

While the protectionist approach can be understood within the context of the current scenario, it is also clear that it has not helped the situation of people fleeing poverty. One might even suggest that these efforts could have indirectly worsened it by bringing about a situation where the plight of political refugees is portrayed as ‘deserving’ and legally enshrined, in contrast to others who are not recognized by law and are thus considered ‘undeserving’, if not outright parasites on the system. However, victims do not become so when the law says they are; but when the situation they are in develops in such a way as to create an injustice. The protectionist approach fails to recognise this and its rhetoric becomes exclusionary, unfair and clearly not rights-based. Such an inconsistency might be avoided if the refugee regime did not specifically choose to target ‘economic’ migrants and other non-refugee migrant populations to make a moral claim on their status. The problem is that cross-border migrants who are not refugees are given an ‘undeserving’ label.

On its official website, the UNHCR states that:

“An economic migrant normally leaves a country voluntarily to seek a better life. Should he or she elect to return home they would continue to receive the protection of their government. Refugees flee because of the threat of persecution and cannot return safely to their homes in the circumstances then prevailing.” (UNHCR)

This dichotomy clearly feeds the prevailing perspective of who ‘economic migrants’ are and why it is claimed that they do not need to be offered any protection or assistance by states. Unfortunately, it is also seriously misleading and defective as (a) it fails to qualify the term ‘voluntarily’ and take into consideration the fact that many people are forced to move due to the precarious conditions in which their families and communities find themselves; and (b) it also fails to consider cases where economic migrants who are forced to return may well reach their home safely but they do so poorer than when they left and are likely to suffer social isolation. The failure to incorporate these and other considerations related to economic migrants, in an attempt to distinguish them from their more ‘deserving’ counterparts, ultimately amounts to a failure to build a true picture of who these migrants really are. Such a lack of recognition of identity is often the cause of a lack of recognition of rights.

A more correct and fair description of economic migrants which would seriously challenge the above dichotomy is provided by Gibney:

“Individual economic migrants might be located at various points on a continuum according to their reason for entrance, with those seeking to improve an appalling low quality of life marked by serious economic deprivation (like many immigrants from Asia and Africa) at one end and those migrating between first world countries in order to take up more lucrative employment opportunities (such as academics and business people) at the other.” (Gibney, 2004: 11)

However, notwithstanding the sensitivity that Gibney (together with others) shows towards socio-economically deprived migrants, he has also warned against the widening of the definition to include other groups of migrants in need. He has argued that this would be no solution at all, but would merely serve to augment the present problems. This is interesting to note but the point of what is being said here is that the refugee regime has not ‘helped’ to portray fairly the problems faced by socio-economically deprived migrants. With the refugee regime growing increasingly on the defensive, particularly after September 11th, but even before to a lesser degree, there appears to be a lack of sensitivity to the issues of migrants fleeing poverty. Considering its long tradition in upholding the rights of disadvantaged migrants, one would have
expected the international refugee regime to act differently. This is partly due to the fact that socio-economically deprived migrants are many times victims of very similar adversities to those that refugees find themselves in both in their countries of origin and more particularly when they set off on their travels.

The unavoidable question at this point is: why is there an internationally enshrined obligation to a political refugee and not to a socio-economically deprived migrant? Some defendants of the current state of affairs have said that cross-border rights should relate only to political situations where the state has failed people (that is, civil and political rights). But nowadays there is a plethora of literature which shows how economic crises can be brought about by bad political decisions, corrupt administration and discriminatory economic policies that threaten the very livelihoods of multitudes of people (Kent, 2005). Evidence also shows that weak governments are the more likely to take wrong political decisions concerning the economy, and are less likely to be prepared when a crisis occurs.

The Interdependence of Human Rights

Human rights form the basis of a world built on freedom, justice and peace. One of the major functions of human rights is to guide governance in local, national and international settings. While the interdependence of civil, political, economic, social and cultural rights is one of the fundamental principles of human rights. It is precisely this interdependence that is often not given due importance. Civil and political rights are enshrined in articles 3 to 21 of the Universal Declaration of Human Rights and in the ICCPR. Economic, social and cultural rights are enshrined in articles 22 to 28 of the Universal Declaration of Human Rights and in the ICESCR. Despite the categorisation of civil and political rights as different to economic, social and cultural rights\(^\text{10}\), the drafters of the UDHR were rightly convinced of the importance of the principle that the different rights could only successfully exist in combination. Both the ICCPR and the ICESCR state:

“The ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his social, economic and cultural rights”

This is held to be true because without civil and political rights people cannot assert their economic, social and cultural rights. In other words, without livelihoods and a working society, people cannot assert or make use of civil or political rights. The equal status, indivisibility and interdependence of civil, political, social, economic and cultural human rights have been affirmed unanimously and repeatedly by the international community, most notably at the Vienna World Conference on Human Rights (1993) and at the Millennium Summit (2000).

This was not even a new idea in 1945, when the drafting of the UDHR was commissioned. In his momentous address known as the Four Freedoms speech at the 77th United States Congress in 1941, US President Woodrow Wilson had already described four interconnected freedoms that are indispensable pre-requisites for ‘a just and secure world’ and which humans ‘everywhere in the world’ ought to enjoy. These were freedom of speech and expression, freedom of every person to worship in his own way, freedom from fear and freedom from want. The concept of ‘Freedom from want’ thus endorsed for the first time, a right to economic security.

‘Freedom from want’ and the right to a sustainable livelihood have been affirmed in many international treaties: the UDHR, Article 25(1) states that “everyone has the right to a standard of living adequate for the health and well-being of himself, and his family, including food”; the ICCPR, Article 1(2) states that, “In no case may a people be deprived of its own means of subsistence”; and the ICESCR, Article 11 states that States Parties, “recognize the right of everyone to an adequate standard of living for himself, and his family,

\(^{10}\) Opponents of the indivisibility of human rights say that the two sets of rights are fundamentally different. One of the main reasons they cite is that civil and political rights are so-called negative rights meaning the state can protect them simply by taking no action; whereas economic, social and cultural rights are positive rights meaning that they require active provision of entitlements by the state (as opposed to the state being required only to prevent the breach of rights). Other scholars have shown that it is easy to find examples which do not fit the simplistic categorizations put forward by opponents to the indivisibility characteristic.
including adequate food, clothing and housing” and also recognizes “the fundamental right of everyone to be free from hunger.”

Western states have been hugely influenced by this approach and there are ongoing attempts to give equal weight to civil and political issues on the one hand and economic, social and cultural ones on the other hand. An example of this is the rampant use of rhetoric on the significance of global poverty eradication/reduction programmes and the creation of sustainable livelihoods. Other examples are the numerous funded programmes with these same aims which have been introduced by some European countries and institutionalised by the European Union.

It is thus generally agreed that the right to adequate food and freedom from poverty, understood as socio-economic deprivation, is a basic right. Henry Shue, who has written extensively on international ethics, has defined basic rights as those necessary for the enjoyment of all other rights. In these terms, the right to adequate food and freedom from poverty are most certainly basic rights.

In his work on international distributive justice (Shue, 1980), Henry Shue argues for a basic right to subsistence. He defines rights as the rational basis for a justified demand. While admitting that in practice one can end up having to prioritize rights in policy, he tries to prove that at least one small set of what are normally categorized as economic rights belong among the rights of the highest priority. For Shue, the issue of the moral prioritizing of rights is relevant in relation to policy making. In principle, the prioritization of any set of human rights over another is flawed, although it is understandable that in practice, when decisions have to be taken or policies are put forward, there arise situations where the greater moral importance of a particular right (subject to the particular setting) would have to be assessed. Such a scenario would not mean that violations of the rights which are not prioritized should be altogether ignored.

Seen in this light, Shue’s is a noble attempt at presenting the importance of economic rights to the well-being of individuals. His main aim remains that of establishing a ‘moral minimum’ which every human being is entitled to. He goes on to elaborate on the changes (by individuals and institutions) needed for this moral minimum to be observed. The moral minimum, or ‘basic’ rights, as Shue calls them, are a shield for the defenceless against some of the more devastating and more common of the threats to life, which include loss of security and loss of subsistence. They are a restraint on economic and political forces that would otherwise be too strong to be resisted. They act as social guarantees against actual and threatening deprivations of at least some basic needs. Basic rights are an attempt to give to the powerless a veto over some of the forces that would otherwise harm them most, and as such these basic demands constitute every person’s minimum reasonable demands on the rest of humanity. Most importantly, basic rights cut squarely across civil and political (negative) and economic, social and cultural (positive) rights.

Shue argues that the same reasoning that justifies treating security and liberty as the substances of basic rights, also supports treating subsistence as a basic right. He concludes that from a rights-based and moral perspective, rich countries are required by justice and international law to share their abundance with those millions who are chronically malnourished.

Shue’s arguments on moral obligations lead us once again to the same arguments used by President Wilson when he spoke of the four freedoms. It is worth noting that the four freedoms recalled above not only cut across the two distinguishable categories of civil and political rights on the one hand, and economic, social and cultural rights on the other, but the model confess equal weight on both. This further confirms that from a moral and a human rights point of view one cannot justify the predominance of civil and political rights over economic, social and cultural rights. The well-being of people requires the upholding of both sets of rights.

Unfortunately, this has not been the dominant view for many years. The world’s leading international human rights organizations of the 1960s focused on the protection of civil and political rights, no doubt contributing significantly to the development of such rights to the detriment of others. The historical marginalization of

---

11 Poverty is viewed in this paper as multi-dimensional rather than strictly income-related. Poverty is deprivation of those things that determine the quality of life, including food, clothing, shelter and safe drinking water, but also such “intangibles” as access to education and freedom of social and cultural expression.
economic, social and cultural rights, however, has had an undesired effect and has demonstrated that securing civil and political rights is vital but insufficient. Shue’s arguments are a reaction to this prevailing situation. Despite the elaborate international legal system designed to satisfy the basic needs of individuals, whole communities continue to be victimized by national and international policies that condemn them to increasing poverty and deny them their rights.

It would appear that socio-economically deprived migrants from these communities should also be morally eligible to protection or at least assistance by other States, on the grounds that their human rights in their home country are being violated. There is great awareness and international support to work on poverty-reduction, in situ. The difference is that while there are also many projects focusing on conflict transformation and democratization in situ, there is also the accompanying right to asylum for individuals who migrate spurred by fear for their lives brought on by impinging political circumstances. The situation is very different for individuals who migrate out of fear that the scarcity they are living in will at best lead to a miserable quality of life, and at worst to starvation and death. While there might be help in situ given by organisations and in the form of foreign aid, those who feel forced to leave their land are not given any accompanying rights to asylum or protection when they enter another country. This comparison brings to light a clearly inconsistent approach. Yet, on this point, Gibney has argued that:

“...a distinction can be drawn between the moral force of the refugee’s claim and that of the economic migrant’s. The difference is rooted in the fact that the needs of refugees, involving as they do persecution and life threatening states of affairs, are more urgent than those of migrants attempting to escape poverty. If economic migrants are refused entry, they are forced to remain in a situation of poverty; if refugees are turned away, their very lives might well be on the line.” (Gibney, 2004: 12)

Urgency and immediacy may well be more pronounced in cases involving victims of political persecution, but this does not in any way mean that victims of poverty are less threatened. An obligation of responsibility ought to be upheld in all cases where fundamental human rights are breached, be they civil and political, or economic, social and cultural. Gibney’s assertion begs the question as to why seemingly different statuses are given to ‘freedom from fear’ and ‘freedom from want’. Is the refugee regime also a product of a global society which recognises ‘fear’ as more vital than ‘want’?

Another ethical consideration which is worth mentioning is the principle of non-refoulement. Refoulement refers to the forced return of refugees. The principle of non-refoulement of refugees and asylum-seekers is one of the fundamental principles of customary international law, more specifically refugee law. Nonetheless, it is widely accepted that the sovereign state’s right to enforce its immigration policies warrants that immigrants in breach of immigration laws could be sent back. The forced deportation of any economic migrants raises several questions, as this ‘group’ may include (a) failed asylum seekers who also claimed political persecution but were unable to prove it; (b) migrants who are fleeing a situation of socio-economic deprivation and are not in a position to cater for their (or their families’) livelihoods; and (c) many migrants who are not strictly fleeing political reasons, ethnic strife or severe deprivation - but have pre-empted a worsening political and/or socio-economic situation, with the result that their own decision to migrate has left them even more vulnerable (financially, socially or otherwise).

This brief illustration has purposefully retained simplified arguments for the sake of keeping to the main focus of this paper. Nonetheless it important to bear in mind, when discussing the assistance of migrants who claim socio-economic deprivation, that such real life cases are complex and many times do not fit neatly into one category or another. This is owing to the fact that the links between poverty and conflict are often very strong. People with claims for political asylum could have become impoverished during a conflict and, conversely, there are circumstances when poverty and lack of resources have brought about conflict. The irony of the refugee regime is that asylum-seekers must deny the influence of economic conditions in order to satisfy most of the world’s refugee laws (Gordenker, 1987).

Conclusion

It has been argued that poverty is a violation of human rights brought about by negligent, irresponsible or bad governance, and that this should be recognized in debates on immigration. Intrinsic to human rights and
to discussions of people’s well-being, is the principle that the human person ought to be seen holistically. It is thus imperative that equal importance be given to both ‘freedom from fear’ and ‘freedom from want’. This is most clearly seen in the basic document of human rights, the UDHR, which purposefully encompasses both sets of civil and political rights, and economic, social and cultural rights. On a parallel plane, globalization and cosmopolitanism have evidenced more clearly the increasing interdependence within the global community and the ensuing need for a consolidation of international solidarity. Foreign aid, NGO activity in awareness raising and in projects on the ground, the involvement of the private sector in embracing corporate social responsibility and funding projects in developing countries, and the Millennium Development Goals are all examples of international solidarity operating at different levels.

Globalisation has also brought about an overall increase of all types of migration. Amongst these flows we also find individuals fleeing their countries due to personal political persecution, and it is well established that we have an obligation towards such individuals. This paper has questioned whether the refugee regime, or rather the lack of a similar system of protection and assistance for individuals fleeing poverty - the ‘other side’ of globalisation - is a result of the conventional belief that the violations of civil and political rights are of a more serious nature than other violations of rights.

The duty of the State is to protect its citizens and ensure that all their human rights are upheld. This means that governments are responsible for creating a socio-political and economic environment in which everyone feels secure, able to sustain their livelihoods and make their own life choices. Unfortunately, this has not been the case for people whose governments have failed to create a situation where they can see that their livelihoods and their families’ livelihoods are sustainable. When solutions do not appear in sight, the distressing insecurity and the prospects of socio-economic deprivation drive some people to the often painful decision to migrate. But these migrants, unlike political refugees, have no right to ask for assistance and solidarity in other countries. This in turn raises further questions on the moral obligation of host countries towards socio-economically deprived migrants.

As the role of Civil Society Organisations is being increasingly acknowledged in the economic migrants’ countries of origin and destination, there is a correspondingly greater need for these organisations to be on the forefront in the evaluation of the ethical principles which sustain or challenge current practice. A moral re-evaluation of our responsibility in this field is called for, particularly now, at a time when the rapidly changing global scenario is making us more aware of new situations. Our responsibilities towards the ‘Other’, the foreigner in need ‘on our doorsteps’, are now more urgent than ever.

Bibliography


