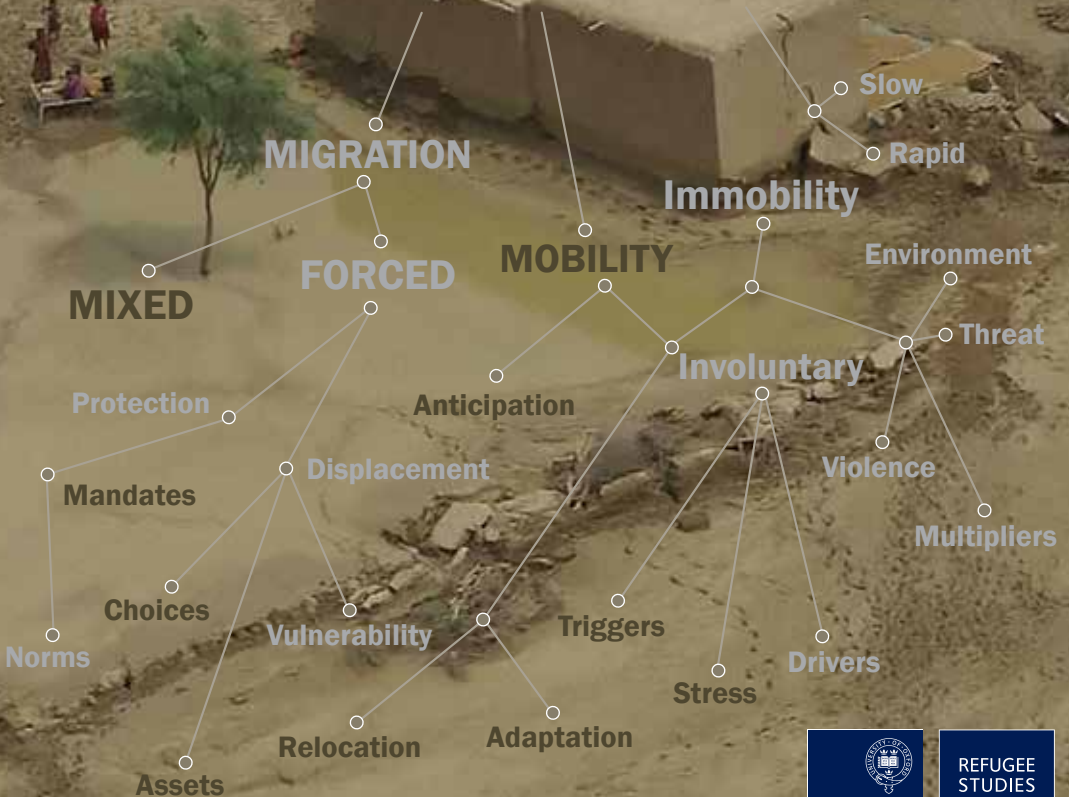


# FORCED MIGRATION

review

Issue 45  
February 2014

# Crisis



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Front cover:

The flooded village of Tali, in Balochistan, following torrential rains and flash floods which affected around a million people in Pakistan in 2010.  
UNHCR/N James

## Forced Migration Review

(FMR) provides a forum for the regular exchange of practical experience, information and ideas between researchers, refugees and internally displaced people, and those who work with them. It is published in English, Arabic, Spanish and French by the Refugee Studies Centre of the Oxford Department of International Development, University of Oxford.

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## From the editors

Many people who are displaced or become 'trapped' in the context of diverse humanitarian crises do not fit well within existing legal, policy and operational frameworks for the protection of refugees and internally displaced people. This raises questions about whether there needs to be, or can be, more systematic or normative ways of dealing with assistance and protection for people affected by environmental crises, gang violence, nuclear disasters, food crises and so on. Do, for example, these different types of situation or event in effect create common types of movement? And would that then enable lessons to be drawn and guidance to be developed for humanitarian crises triggered by the whole range of events and processes? Can we also distil common themes and guidance, in relation to movement and protection needs, responses and challenges, across crisis situations – or not? On the other hand, creating new norms is neither easy nor without possibly problematic consequences.

As Peter Sutherland, Special Representative of the UN Secretary-General for International Migration and Development, writes in his Foreword: "[W]hen it comes to protecting migrants' well-being and rights, smart practices abound. ... We need to clarify the critical roles that all key actors – including countries of origin and destination, neighbouring states, businesses and civil society – should play."

This issue of FMR presents a number of articles based on work done for the Crisis Migration Project in Georgetown University's Institute for the Study of International Migration (ISIM), alongside a number of other articles submitted in response to an FMR call for articles. This issue also includes a range of general articles on other aspects of forced migration.

We are grateful to Susan Martin, Sanjula Weerasinghe and Abbie Taylor at ISIM for their advice and support as special advisors on this issue. We are also very grateful to the Crisis Migration Project and to the John D and Catherine T MacArthur Foundation for funding this issue.

The full issue and all the individual articles are online in html, pdf and audio formats at [www.fmreview.org/crisis](http://www.fmreview.org/crisis). It will be available in print and online in English, French, Spanish and Arabic. An expanded contents listing for the issue is available at [www.fmreview.org/crisis/FMR45listing.pdf](http://www.fmreview.org/crisis/FMR45listing.pdf)

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Details of our **forthcoming issues** – on Afghanistan, Syria and Faith-based responses to displacement – can be found on page 99.

To be notified about new and forthcoming FMR issues, join us on Facebook or Twitter or sign up for our email alerts at [www.fmreview.org/request/alerts](http://www.fmreview.org/request/alerts)

With our best wishes

Marion Couldrey and Maurice Herson  
Editors, Forced Migration Review

## Foreword on migrants in crisis

Peter D Sutherland

The carnage of asylum seekers and migrants making the perilous journey to a better life makes frequent headlines; thousands die every year in the Mediterranean alone. Far too little is done to mitigate the risks such migrants face. Poverty, vulnerability and war are rife in our times, but compassion is in short supply.

It is self-evident that we lack the political will, and perhaps the capacity, to develop a robust system to protect asylum seekers and migrants seeking to cross international borders. We fear this will encourage yet more migration, that it might compromise our security, and that we do not have sufficient resources to provide assistance and protection. Nonetheless, we must persevere.

One approach is to disaggregate the protection challenge into more manageable constituent elements. Three years ago, for instance, I called on states and stakeholders to address the plight of international migrants affected by acute-onset crises such as the conflicts in Libya and Syria, Hurricane Sandy in the US, and the tsunami and nuclear catastrophe in Japan. Last year, the US and the Philippines committed to lead an effort to develop a framework for doing so; they now have been joined by several other countries. This initiative is a proving ground for our commitment to helping the world's most vulnerable populations.

Migrants in such crisis situations are affected by the absence or inadequate implementation of norms, obligations and standards, notably those relating to human rights and humanitarian law. Operational gaps – or lack of coherence and resources – compound the negative effects of crises on migrants. Efforts by governments, international organisations and NGOs to redress these shortcomings are far too limited.

Yet when it comes to protecting migrants' well-being and rights, smart practices abound. There are many practices that can and should become global standards. The International Organization for Migration and UNHCR, for example, were imaginative in going beyond

their mandates to protect migrants at risk in Libya in 2012, as were many NGOs, while the World Bank acted quickly to provide funds to evacuate Bangladeshi nationals. With the number of international migrants set nearly to double in the foreseeable future, such practices must become reference points for action.

But international organisations alone cannot solve the problems. We need to clarify the critical roles that all key actors – including countries of origin and destination, neighbouring states, businesses and civil society – should play.

It should be self-evident that we need to help all migrants in distress – not only those affected by conflicts and disasters but also those abandoned by smugglers, countless more left in limbo for years in transit countries, and the millions working in slave-like conditions. The principles and plans that we put in place to protect migrants in life-threatening situations eventually could – and should – be extended in order to protect a much broader array of vulnerable migrants.

We need not be overwhelmed by the dizzying array of problems plaguing migrants. Disaggregated into its component elements, an issue like migration resolves itself into choices which are fundamentally moral in character, and not simply the preserve of specialists, economists or sociologists, much though we have to learn from their research and guidance. With small groups of states, experts, international organisations and civil society working together with the necessary resolve to pilot solutions that might become global practices – a model that could also be applied to other international problems – we can address the challenges facing migrants one by one. By building small and nimble coalitions of committed stakeholders we can make fast, effective progress on a range of critical issues. We are not helpless.

Peter D Sutherland [Peter.sutherland@gs.com](mailto:Peter.sutherland@gs.com) is Special Representative of the UN Secretary-General for International Migration and Development.

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## What is crisis migration?

Susan Martin, Sanjula Weerasinghe and Abbie Taylor

**Movements precipitated by humanitarian crises have implications that touch upon immigration control and national interests, human rights, humanitarian and development principles, and the frameworks for international protection, cooperation and burden sharing.**

Existing legal and institutional frameworks manifest limited capacity to accommodate all those with protection needs. Even when frameworks exist, in practice there are considerable gaps in implementation. Humanitarian crises triggered by different events and processes — whether acute or slow-onset, natural or human-made — create common and different movements and protection needs. Some movements occur due to the imminence of real or perceived threats to life, physical safety, health or basic subsistence, while others take place in anticipation of such harm. Still other movements fail to take place, leaving individuals and communities potentially at considerable risk.

The Institute for the Study of International Migration's Crisis Migration Project<sup>1</sup> attempts to describe the phenomenon of 'crisis migration', positing three principal ways in which humanitarian crises affect movement. (These categories are not mutually exclusive as people may move from one to another or fall into more than one.)

- **Displacement**, encompassing those who are directly affected or directly threatened by a humanitarian crisis – that is, those who are compelled to move by events beyond their direct control. The displacement may be temporary or it may become protracted.
- **Anticipatory movement**, encompassing those who move because they anticipate future threats to their lives, physical safety, health and/or subsistence. In some cases, the movements involve entire communities while at other times individuals and households migrate.

- **Relocation** for persons who might otherwise be trapped in place, encompassing those who are directly affected or threatened by a humanitarian crisis but who do not or cannot move due to physical, financial, security, logistical, health and/or other reasons.

In a bid to identify gaps in protection and commonalities and differences in all movements across various crises and the associated protection needs of those who move (and those who remain trapped and in need of relocation) during humanitarian crises, the analytical lens of crisis migration is deliberately broad. 'Crisis migrant' is thus a descriptive term for all those who move, including those who require relocation in the context of humanitarian crises. The concept reflects the endless historical reality and significance of movement as a crucial response to crises.

Categorising movements related to humanitarian crises presents many dilemmas for scholars and policymakers alike. It is increasingly recognised that few migrants are wholly voluntary or wholly forced; almost all migration involves a degree of compulsion,



A cyclone-devastated home in southern Bangladesh, 2007.



just as almost all migration involves choices. Those who move in anticipation of threats make choices but they do so within constraints and may have few alternatives. Equally, those who are compelled to move when confronted with acute violence, conflict or disaster make choices, albeit within a limited range of possibilities, particularly as to where they will move. Any secondary movement, including the choice of destination, may also be shaped by considerations concerning livelihood, betterment or other life-chances. Even in the direst humanitarian crises, for many there is still an element of choice, since some may choose to stay, risking their lives rather than leave their homes.<sup>2</sup>

‘Mixed migration’ or the ‘migration-displacement nexus’ are terms that have arisen from the difficulties inherent in cleanly demarcating between forced and voluntary movement and in theorising and classifying causes of movement. Various manifestations of mixed migration are found in crisis situations. One example is the intersection of categories, when migrants simultaneously fit two or more pre-existing categories, such as non-citizens displaced internally within Libya in 2011. Another is mixed flows of migrants with different motivations utilising the same routes and modes, such as those people who are displaced or those who anticipate future harm boarding the same boats in precarious conditions and risking their lives at sea along with people migrating for other purposes. Mixed strategies, in which different types of migrants adopt similar coping mechanisms, include for example rural-urban migrants, refugees, returnees, IDPs, former combatants and gang members who face similar obstacles in making a life for themselves among slum dwellers in urban centres.

### Who are the crisis migrants?

In the evolution of normative and operational responses to movement in the context of humanitarian crises, causality has been of paramount concern in framing responses and has shaped classification systems that place those who migrate into specific categories – for example, the classification

of people who flee across borders “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” as refugees. Yet the convergence of factors such as drought and conflict or the interplay of drivers and motivations hinders a straightforward assessment of causation in many cases.

Many argue that the experiences and strategies of those who fall outside existing categories of forced migrant tend to disappear from view, leading to their neglect or worse. Dominating efforts to address this is the recognition – by governments, academics and institutional and civil society actors – of protection gaps for those who move across national borders because of environmental and climate change. Commendable as these efforts are, questions remain as to the benefits of isolating and privileging these factors as a cause of movement, particularly in light of the abundance of evidence about the diversity of factors influencing movement-related decisions.

Most research suggests that climate and environmental change-related impacts have a multiplier effect on other drivers that influence movement-related decisions. In some cases environmental change-related impacts may be the trigger for movement but not necessarily the cause. Should those who are forced to move because of environmental and climate-change impacts be treated any differently or more generously than those who move because they fear for their lives, safety or health because of a nuclear accident or persistent gang violence? Should responses privilege particular ‘causes’? These are not easy questions to answer and they also prompt us to challenge traditional notions of a crisis as a finite event, especially in the context of slow-onset crises.

Re-thinking categories based on forms of movement, rather than causes, does not mean that causation is unimportant. Rather, ascertaining the reasons why people move may be critical at the assessment stage,

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UNHCR/T. Tan

The drought in Jawzjan province of northern Afghanistan has made the land unfarmable, 2006.

particularly in trying to understand their needs and their future options. Causal considerations may also prove especially salient in determining what types of solutions may be appropriate and feasible.

Specific types of crisis migrants may experience varying levels of vulnerabilities, even where their movements or non-movements are similar. Some people may become vulnerable because they lose their social or economic support systems in periods of crises and during and following movement (for example, the elderly, women heads of household, the extremely poor, unaccompanied minors and persons who are trafficked). Yet, others may be vulnerable because of their status – such as non-citizens and those without legal status.

Coping capacities may also evolve, and indeed erode, according to the evolution of a humanitarian crisis and the stage at which people move. In the case of slow-onset crises associated with climate change

and environmental degradation, people's resilience may erode gradually over time. Those who move sooner rather than later – before the 'tipping point' of a crisis – may be less at risk than those whose coping capacities are diminished and who may become trapped. Vulnerability and resilience also affect the propensity to move in conflicts.

Relatedly, not all are able to benefit equally when solutions are promoted. For example, those rendered landless or with disabilities resulting from the crisis may continue to have pressing needs even after return is feasible and desirable for others. The so-called 'end of displacement' may not correlate with a cessation of needs and improved conditions in an abating crisis. Rather, the threat of multiple displacements continues. This may be due to a variety of factors: poor consideration of the specific needs of vulnerable populations; lack of risk reduction planning; restrictive government policies; and rigidity within governments and the international community in responding operationally to

the evolution of a humanitarian crisis such as neglect of early recovery programming and income-generating opportunities.

### Protection for crisis migrants

When identifying the need for responses, all crisis migrants and their unique vulnerabilities, coping capacities and protection needs must be considered. Some form of prioritisation may need to be undertaken to determine who gets protection and what status and content that protection should entail. In formulating responses, a number of factors need to be taken into account including the roles and responsibilities of different actors such as countries of origin, transit and destination, and the protection afforded under existing mandates and frameworks.

Protection is a concept that enjoys a long history and manifests today in a myriad of forms – diplomatic protection, consular protection, surrogate protection, complementary protection, temporary protection and humanitarian protection, to name a few. At the practical level, the most widely accepted definition of protection used by humanitarian actors was developed during a lengthy series of workshops and consultations sponsored by the ICRC: “The concept of protection encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law” (i.e. human rights law, international humanitarian law and refugee law).<sup>3</sup> In the context of humanitarian crises, the value of this definition arguably lies in its ability to accommodate the plethora and diversity of needs exhibited by those who move or those who become trapped.

Crisis migrants’ needs are manifold. Some crisis migrants may need immediate protection, be it evacuation from areas constituting imminent threats, protection of physical safety and security, or access to life-saving and basic subsistence services. For some, the need for protection is short-term, ending when they can return

safely to their homes, while others will require more sustainable interventions. Even in cases of return, however, there may be need for compensation, restitution or remedial mechanisms to protect fundamental human rights.

The absence of clear responsibility often leaves gaps in protection. Ultimately, perhaps the most pressing challenge in providing protection to crisis migrants is determining who is in need of international protection. One can divide those who move in the context of humanitarian crises into three categories, according to the posture of their governments, in order to determine if international protection is needed because of an absence of state protection.

In the first category are individuals whose governments are willing and able to provide protection, because even wealthy countries are not immune to crises. In such cases there is a limited role for the international community, although other governments and international organisations may offer assistance.

The second category includes individuals in situations where governments are willing but are unable to provide adequate protection. They would like to protect their citizens from harm but do not have the capacity or resources to do so. In these situations, most recently played out after Typhoon Haiyan reaped unimaginable devastation in the Philippines, the international community has an important role to play by ensuring that it buttresses the willing states’ ability to provide protection.

The third category encompasses situations in which governments are unwilling to provide protection to their citizens or non-nationals on their territory. In some cases, the government has the capacity to provide protection but is unwilling to offer it to some or all of its residents. In these situations, international protection may well be essential, regardless of the cause. The humanitarian diplomacy that has enabled such intervention in conflict



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situations is a model that should be applied more generally to non-conflict-induced crises.

In this respect, when analysing existing frameworks and evaluating existing responses and developing new ones to protect crisis migrants, a range of factors must necessarily inform such an inquiry. The Crisis Migration Project attempts to address the following questions in this context, as well as to draw out their policy and practice-related implications:

What type of protection is necessary in a given crisis situation, and what should be the content of that protection? Long-term, international protection? Protection against *refoulement*? Temporary protection or humanitarian protection including admission to territory? Evacuation or relocation? Life-saving humanitarian assistance in the form of basic services, shelter, protection against physical harm, for example? Assistance in redressing violations of human rights or creating sustainable livelihoods?

What policies and practices should be established in terms of durable solutions to address the situation of crisis migrants when return to countries and/or communities of origin may be inadvisable or life threatening? What ethical considerations should inform these policies and practices?

In what ways do states have obligations for the provision of such protection? To what extent can institutional and other mandates cover the provision of such protection? What, if any, are the corresponding rights of directly (and indirectly) affected crisis migrants?

What are the normative, implementation and/or practice gaps? Is there a need to clarify the ways in which existing frameworks apply to a given situation? Is there a need to create a new legal status for particular groups? If new statuses are created and new frameworks are put in place for crisis migrants, how should these intersect with established systems for the protection of refugees and those able to benefit from complementary protection?

Which actor or actors should be involved in delivering the necessary protection, and in what capacities? Community, local or national actors, state authorities, civil society, or family, community or other social networks? Regional players? The international community, including UN member states, organs and actors within the UN system, other international organisations and/or donors?

How should causal considerations intersect with attributing responsibilities for the provision of protection, particularly where states bear a significant responsibility for the creation of a humanitarian crisis and the associated movements?

In the search for answers, it is important to bear in mind that human rights law accords rights to individuals even when they are outside their country of origin or habitual residence and whether or not the state where they are residing is able or willing to offer them protection or assistance. To this end, understanding the reality of crisis migrants and the complexity of crisis migration should be a step in finding solutions to their needs.

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Their edited volume, *Humanitarian Crises and Migration: Causes, Consequences and Responses*, will be published by Routledge in March 2014. This article is based on the introductory chapter to the volume.

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## The concept of crisis migration

Jane McAdam

**Crisis migration needs to be understood in terms of ‘tipping points’, which are triggered not just by events but also by underlying structural processes. It is important for policymakers for there to be an adequate theory behind the concept of ‘crisis migration’ so that responses are appropriate, timely and thoughtful.**

Protection and assistance issues may be as acute in the aftermath of a natural disaster as in conflict; those displaced may suffer from the same lack of access to basic rights and resources, and experience psychological distress. Until recently, however, the international community’s focus has been on protecting those displaced by conflict, despite the growing (and larger) number of people being displaced by natural hazards. The UN High Commissioner for Refugees has stated that “while the nature of forced displacement is rapidly evolving, the responses available to the international community have not kept pace”<sup>1</sup> and, according to the UN’s Emergency Relief Coordinator, more frequent and severe disasters may be “the new normal”<sup>2</sup>.

Yet, while we might instinctively think that ‘crisis migration’ entails movement in response to an objectively perceptible hazard, such as a flood or earthquake, it is the underlying social dimension which will transform it from a merely hazardous encounter into a situation of stress that tests the resilience of both individuals and communities, and may lead to movement. What constitutes a ‘crisis’ and spurs migration will depend upon the resources and capacity of those who move, as well as upon the ability of the state into or within which they move to respond to their plight. Migration is a normal, rational response to natural disasters and the more gradual impacts of environmental change. This is not to say that it should always be assumed to be voluntary but rather that it should not automatically be treated as abnormal.

Because natural disasters and other hazards are commonplace in some environments, they will not manifest as ‘crises’ unless

certain variables are present. A sudden event may, however, interact with pre-existing stressors such as poverty, overcrowding, environmental fragility, development practices and weak political institutions. Thus, what may be weathered by one community or individual may constitute a crisis for another.

‘Crisis migration’ is therefore best understood as a response to a complex combination of social, political, economic and environmental factors, which may be triggered by an extreme event but not caused by it. Particular events or processes should be recognised as just one aspect of the process of a crisis, which is rooted in systemic inequities or vulnerabilities that render particular groups more vulnerable to displacement. When conceptualised in this way, ‘crisis migration’ implies acute pressure on the person or group that moves, rather than necessarily indicating the presence of an extreme or sudden event.

A helpful way to understand this is in terms of tipping points. When does the cumulative impact of stressors – whether socio-economic, environmental, political or psychological – tip someone over the edge? When is moving away preferable to staying put? Irrespective of whether a crisis is triggered by acute or chronic conditions, there will be tipping points involved, and these will vary from individual to individual.

### Policy implications

Such an understanding has far-reaching policy ramifications because when a ‘crisis’ is understood as something more than a single, sudden event, we can start to contemplate interventions over longer timeframes, different combinations of institutional actors, new partnerships, and more sustainable funding

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models. Definitions matter even more if they determine access to legal entitlements or humanitarian assistance.

It is not just within academic circles that the ideas of 'crisis' and 'migration' are being considered together. States chose 'managing migration in crisis situations' as the theme of the 2012 International Dialogue on Migration organised by the International Organization for Migration (IOM). Given the potential policy and legal ramifications of deliberations in such contexts, it is critically important that they are conceptually clear.

The IOM discussions suggested that policymakers intuitively understand the concept of 'crisis' as a pivotal moment or turning point – an emergency situation. But the problem with conceptualising 'crisis migration' as an individual's or community's response to an external event is that it can obscure pre-existing fragilities, placing the focus on a physical occurrence rather than a holistic appraisal of socio-economic circumstances. A related concern is that improved development practices (poverty reduction schemes and so on), which already have strong institutional frameworks, may be overlooked in favour of emergency responses which are typically reactive and ad hoc, addressing symptoms but not causes.<sup>3</sup>

Furthermore, it is essential that policymakers appreciate the way in which mobility has (or has not) featured historically within particular communities. Otherwise, interventions may be misplaced. For example, in the Pacific islands, mobility is a core part of historical and present experience, and movement therefore needs to be understood as an adaptive strategy that is part of a historical continuum.

If meaningful change is to be effected, it will be necessary to transcend conventional policy



Somali refugees

IOM/Brendan Bannion

silos and instead promote coordination within and between governments, international and local agencies, and NGOs. A more holistic approach across different sectors is needed, with improved links between the humanitarian and development communities.

The nature and timing of policy interventions will play a major role in shaping outcomes to 'crisis migration'. They will also help to determine whether such migration can function as a form of adaptation, or will instead signal a failure to adapt.<sup>4</sup> Migration as adaptation posits movement as a productive force to be harnessed and developed, rather than as an overwhelming humanitarian calamity to be solved.

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# Lessons from the development of the Guiding Principles on Internal Displacement

Roberta Cohen

**The Guiding Principles on Internal Displacement filled a major gap in the international protection system for uprooted people. Whether their development holds lessons for those seeking to develop standards in the migration field remains a question to explore.**

The process by which the Guiding Principles on Internal Displacement (GPs) were developed has become a more accepted course of action. The Principles have gained broad international recognition and authority even though independent experts, not states, prepared, reviewed and finalised their provisions outside a traditional intergovernmental framework.<sup>1</sup> The innovative process also paved the way for the development of other UN standards, the Pinheiro Principles and the Guiding Principles on Business and Human Rights.<sup>2</sup>

Yet, the GPs succeeded for specific reasons. To begin with, they were based on and consistent with existing law. States were not asked to assume new obligations but rather to understand better how to apply their existing obligations in new situations. Second, the GPs were developed under the direction of a UN expert, the Representative of the UN Secretary-General on Internally Displaced Persons (RSG) Francis M Deng. Although they were drafted by a team of international lawyers, Deng led the process and reported regularly to the Commission on Human Rights and the General Assembly which requested the development of an appropriate framework to protect IDPs.

Third, the GPs responded to a critical need that states and international organisations wanted to address. The explosion of civil wars emanating from and following the Cold War caused millions of persons to be forcibly uprooted inside their countries by conflict, communal violence and human rights violations, to whom the 1951 Refugee Convention did not apply. The UN began in the 1990s to examine the legal and

institutional gaps affecting those who did not cross internationally recognised state borders.

There are a number of lessons to be learned from the development of the Guiding Principles that may prove useful to those seeking to develop standards in new and emerging fields:

- Prior to initiating new standards, it was imperative to 'put the issue on the map' in order to pave the way for international acknowledgment of the problem and the need to take steps to address it.
- The appointment of a UN expert to lead the process proved effective in persuading governments to accept the development of new principles.
- The association of the expert with an independent institution (in the case of the GPs, the Project on Internal Displacement at the Brookings Institution) was essential to organising and managing the process.
- Support from key governments was vital in building consensus around the Principles, especially among those states with reservations.
- The involvement of experts from UNHCR, the Office of the UN High Commissioner for Human Rights, and the ICRC in drafting the GPs lent support to the international lawyers in charge of the process.
- A broad-based process of consultation on the thorny issues that arose (involving experts from regional bodies, international

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humanitarian and development organisations, humanitarian and human rights NGOs, women's and children's advocacy groups) influenced many governments to respond positively. States were in particular disposed to support the Principles if operational agencies found them useful in the field.

The actual drafting of the GPs also carries lessons:

- Basing the Principles on the three branches of law – human rights law, humanitarian law and refugee law by analogy – allowed for coverage of most situations of internal displacement.
  - Opting for a needs-based approach, that is, identifying the needs of IDPs before examining the extent to which the law adequately addressed those needs, made possible the identification of grey areas and gaps in the law requiring attention. The decision to draw from not only treaty law but also customary law and soft law instruments reinforced this approach.
  - Sticking to existing law in addressing gaps and grey areas rather than creating new law was critical to acceptance. The temptation often existed to improve upon the law but one of the strengths of the GPs is that although not a binding document *per se*, they are based on already binding law.
  - The choice to restate the law enabled the legal team to tailor the law's provisions to the needs of IDPs. In cases where clear gaps were found, the legal team drew upon what they considered implicit in the law. That each Principle could be traced to law already negotiated and accepted by states gave many governments confidence to use the Principles as the basis for policies and laws in their countries.
  - Defining IDPs with enough elasticity to meet the test of time helped make the definition widely accepted. It sought to strike a balance between too narrow a
- framework that risked excluding people and one so broad that it could prove operationally unmanageable.
- Making sure that singling out one group for protection did not confer a privileged status on that group involved pointing out that IDP was not a legal status and that the aim was to ensure that IDPs' unique concerns were addressed along with those of others. IDPs were a vulnerable group in the same way that refugees, women, children and the elderly were.
  - Establishing a conceptual approach respectful of sovereignty, namely sovereignty as responsibility, attracted support for the GPs. They clearly affirm that primary responsibility for the displaced rests with their governments. But they also emphasise that if governments are unable or unwilling to assume their obligations, international organisations are expected to become involved. International humanitarian organisations "have the right to offer their services in support of the internally displaced" and governmental consent is not to be "arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required assistance." The RSG affirmed regularly that it was in states' interests to carry out their national responsibilities.
  - A dissemination plan to reach governments and civil society around the world was crucial to promoting support for them.

#### Limitations and benefits of a non-governmental process

A legally binding instrument, it is argued, would have more authority and international recognition and be more likely to be implemented than the non-binding GPs. But negotiation of an international treaty for which there was limited or no support could have taken decades to complete. It also would have been risky because it could have resulted in the watering down of existing provisions in human rights and humanitarian law on which the GPs were based.



Governments, moreover, do not always ratify treaties they adopt or comply with the treaties they ratify. Influencing governments to carry out their responsibilities is a challenge whether the instrument is binding or non-binding. The two RSGs found it easier to negotiate with national officials on the basis of guidelines because some governments found them less threatening since they could not be formally charged with non-compliance.

In the case of the GPs, sustained usage and acceptance would appear the best route to follow. More and more governments have been adopting national laws and policies based on the Principles, regional bodies like the African Union have adopted the legally binding Kampala Convention, and courts and treaty bodies have been increasingly citing the Principles. In time, this could reinforce the trend toward considering the GPs as customary law; or if international support developed, a legally binding convention could follow.

Could the experience of the Guiding Principles be helpful with the development of standards for 'crisis migrants' or environmentally displaced persons? Doubtless

it could, but it would require, first, the formulation of a clear definition or description of those considered in need of protection and, second, the examination of whether rights and entitlements for such persons can be discerned from existing international law. There would also be need for broad consultations nationally and regionally so that the perspectives of a wide range of governmental and non-governmental actors are brought into play while support for the issue is mobilised.

We do know that the frequency and severity of natural disasters today, fuelled in great measure by climate change, are making it essential to strengthen legal safeguards not only for IDPs (especially those uprooted by slow-onset disasters) but also for those who are forced to cross borders yet are not considered refugees.

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1. The Guiding Principles on Internal Displacement were endorsed by 193 heads of state in 2005 as "an important international framework for the protection of IDPs" [www.who.int/hiv/universalaccess2010/worldsummit.pdf](http://www.who.int/hiv/universalaccess2010/worldsummit.pdf), para 132.
2. <http://unhcr.org.ua/img/uploads/docs/PinheiroPrinciples.pdf> and [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

## Flight to the cities

Patricia Weiss Fagen

**The conditions from which most crisis migrants have fled – threats to life, health, physical safety and/or subsistence – are likely to be reproduced in some form in their urban destinations, at least in part due to their presence there.**

Growing numbers of 'crisis migrants' are settling in cities in their own and other countries. They tend to move into the poorest parts of large and smaller cities, often to informal settlements outside the urban core, where municipal authorities are only nominally in control, services are lacking and conditions are precarious. While adapting to urban life is challenging for all recently arrived, economically disadvantaged populations, those who have been forced to leave places where they might otherwise

have remained can rarely move back if they fail to adapt to being in the city. To a greater extent than migrants who are not driven by crises, they lack protective safety nets and survival strategies; and their material, psychological and security needs are urgent but their needs are often difficult to target because their living environments resemble those of more stable urban poor.

Two categories of urban migrant are of special concern: migrants associated with conflict,

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and migrants whose movements to urban areas are associated with environmental events and processes. These vulnerable and politically charged groups are mixed together in towns and cities of all sizes with growing numbers of other rural migrants and unemployed youth.

Conflicts in many parts of the world have created seemingly irreversible situations that have been largely responsible for undermining return and reintegration strategies and have pushed people to move to, and remain in, urban areas. In some cities of Colombia, the number of IDPs is larger than the original population. In Iraq today, large numbers of IDPs and returned refugees cannot live in their towns and cities of origin because these have become ethnic and/or sectarian enclaves and the return of minority populations would almost certainly provoke renewed violence.<sup>1</sup> Under such conditions host cities become overcrowded and dangerous. Afghanistan's major cities, especially Kabul, are unable to provide for the people who repatriated from Pakistan and Iran and went to the cities instead of returning to their villages. Repairing and bolstering urban and social infrastructure are understood to be a priority by both humanitarian and development agencies but remain far behind urgent needs.

The Liberian capital, Monrovia, is a quintessential example of conflict-driven urban growth, further exacerbated by rural deterioration and continuing ethnic tensions. During the civil conflict from 1989 to 2003, Liberians from across the country fled to Monrovia and other cities where UNHCR and several agencies provided some humanitarian assistance. After 2005 UNHCR conducted a return programme and the Liberian government ceased to categorise these people as IDPs. Nevertheless, large numbers of them remained, especially in Monrovia, for reasons related to continuing insecurity, loss of land and the lack of rural livelihoods. The population in Monrovia



West Point slum, home to some 75,000 people, near central Monrovia, 2013.

as of 2010 is variously estimated between 800,000 and 1,500,000, while its pre-conflict population was 400,000 to 600,000.

South Sudan presents a similar problem, in which a once rural but now urbanised population is attempting to return to a rural setting. Over a period of decades, people fleeing from the conflict in the south of Sudan had found difficult refuge in Khartoum or other Sudanese cities, as well as in refugee camps and cities outside Sudan. With the end of conflict in 2005, and increasingly from when South Sudan was declared independent in 2011, they began returning to the places regarded as their homes. Humanitarian agencies have brought busloads of hopeful former urban dwellers, with little or no knowledge of farming or awareness of conditions in their places of origin, to the new South Sudan. They have found villages where conditions are primitive, tribal-based violence widespread, and services all but inexistent. Many of the unprepared and poorly served returnees undertake secondary migration from the villages to urban hubs, especially the capital, Juba; the better informed South Sudanese exiles go there directly. But cities in South Sudan not long ago were small towns and are utterly unprepared to absorb the newcomers.

#### Adapting to urban environments

Humanitarian assistance is minimally present in cities, so while some do well, others face

food insecurity, inadequate shelter and the loss of effective international protection. International humanitarian organisations have lacked the experienced staff required to identify or protect displaced people in cities, although they have more recently been retraining staff for work in urban settings and experimenting with different approaches, partners and indicators of success.<sup>2</sup>

New efforts notwithstanding, there is still a tendency to under-serve displaced people who have gone to large cities. UNHCR has recognised the need to expand its protection function in urban spaces and has elaborated strategies to achieve this goal. As UNHCR and NGOs expand urban activities, they encounter predictable resentment on the part of local citizens living in the same or similar conditions and receiving no assistance.

The impacts of environmental deterioration and climate change provoke sustained migration, often along previously established domestic or international routes. An exodus to urban areas inevitably exacerbates resource and environmental problems in the destination cities, as new arrivals generally have no choice but to settle in densely populated, unregulated, informal slums, where environmental hazards multiply. Urban land rights and environmental hazards need to be addressed just as urgently as they do in war-torn rural areas. As national and municipal leaders recognise the urgency of strengthening mechanisms of adaptation to cope with current and future population expansion, they need support for stronger, more reliable and protective municipal governance and more robust environmental risk reduction.

In sum, crisis migrants are not new to cities but the combined effects of conflicts, environmental degradation and economic models that have undermined rural economies have now produced an unprecedented urban movement. On the positive side, experts and policymakers are aware that urban spaces are major venues for addressing poverty, and for providing services and

economic opportunities. There are, however, also widespread negative assumptions prevalent among national authorities, donors, international organisations and humanitarian agencies about expanding cities. The widely shared but highly questionable mantra has been that cities are bad places for rural migrants, and rural migrants are bad for urban prosperity. It is fundamentally important to target actions aimed both at preventing and managing crises that give rise to displacement and to address the crises in urban destination locations, improving protection mechanisms in both.

The impacts in cities of natural or industrial disasters and epidemics are exacerbated by large-scale unplanned migration. Ultimately, the urban core and its densely inhabited and unregulated periphery need to be upgraded with land legally accounted for and registered so as to benefit recent migrants as well as longstanding residents. Urban planning often ignores the needs of new arrivals and the especially vulnerable crisis migrants.

Urban modernisation and reforms that include slum clearance are valid development tools. Unfortunately, because crisis migrants and refugees are generally unwanted, they are likely not to be taken into account when local authorities put into action their urban reform plans. In addition, the poor in marginal areas are likely to be the first to be evicted when the urban landscape is upgraded and under more solid environmental control. To evict a population recently displaced by conflict or to oblige displaced persons to reside in remote settlements lacking services or employment possibilities is surely contrary to the intention of the Guiding Principles and is unacceptable even in the name of development. Governments undertaking forced urban resettlement should adhere to international resettlement guidelines, such as those long used by the World Bank.<sup>3</sup>

Having accepted that long-term migrants to the city fall within its responsibility, the humanitarian community is now moving more decisively to address the needs of

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urban-based victims of conflict, disasters and environmental degradation. Advocates in urban areas have until recently largely focused on helping forcibly displaced people to return to small communities, or they have initiated projects on behalf of specific segments of the urban population, such as for street children and trafficked women. It is difficult to overstate the challenges now facing UNHCR and numerous NGOs in reorienting their staff and deploying their resources to cities but it is particularly important that humanitarian agencies work in closer partnerships with development actors and government officials than has been the case historically.

Urban planners in most places are very well aware of the severity of the problems they face as a result of rapid growth. They seem less aware, however, of the dimensions of the problems that are producing such rapid urbanisation. Development actors

too often, and mistakenly, consider crisis migration as a temporary phenomenon and primarily a humanitarian problem. As has become abundantly clear, people forced to flee and to move to cities more often than not remain there for long or indefinite periods. Municipal and national authorities now need to find ways to integrate them.

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1. Unlike most crisis migration situations, those Iraqis who fled were mainly urban dwellers who went to other cities.
2. FMR issue 34, published in February 2010, is devoted to 'Adapting to urban displacement'. The various articles describe the often miserable conditions and lack of security that refugees experience in cities, and offer guidelines related to various sectors of humanitarian operations.
3. World Bank, *Involuntary Resettlement Sourcebook: Planning and Implementation in Development Projects*, 2004 <http://tinyurl.com/WB-InvoluntaryResettlement>

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## Choice and necessity: relocations in the Arctic and South Pacific

Robin Bronen

**Relocation – whereby livelihoods, housing and public infrastructure are reconstructed in another location – may be the best adaptation response for communities whose current location becomes uninhabitable or is vulnerable to future climate-induced threats.**

Erosion, flooding and sea-level rise threaten the lives, livelihoods, homes, health and basic subsistence of human populations currently inhabiting the Arctic and small islands in the tropical and sub-tropical oceans. Warming global temperatures are causing a loss of the natural barriers that protect coastal communities from sea surges, erosion and floods. Arctic sea ice is decreasing in thickness and extent, causing a delay in freezing of the Bering and Chukchi Seas. Near the shore, pack ice has historically provided a protective barrier to coastal communities but the delay in freezing of the Arctic seas is leaving coastal communities in western Alaska exposed to the autumnal storms while the loss of Arctic sea ice, coupled with thawing permafrost, is causing severe erosion and storm surges.

In the tropical and sub-tropical oceans, coral reefs and mangroves protect coastal communities from extreme weather events and storm surges but coral reefs have been dying or degrading dramatically in the past 20 to 50 years and will continue to do so as temperatures rise. Sea-level rise will also contribute to flooding, sea surges, erosion and salination of land and water.

### Climate-induced change and mobility

Because of these disparate climate-induced environmental changes, individuals and communities will be displaced. The climate-change drivers of displacement fall into three categories: extreme weather events, such as hurricanes; the depletion of ecosystem services by slow-onset environmental

change; and the combination of repeated extreme weather events and slow-onset environmental changes that accelerate and are exacerbated by these extreme weather events. Each of these drivers will cause distinct patterns of human migration, which will vary depending on the length of time of the migration and the demographics of the population movement. The relocation of entire communities will occur when the land on which they live becomes uninhabitable and disaster risk reduction strategies are not able to protect populations in place. The Newtok Traditional Council in Alaska and an NGO in Papua New Guinea's Carteret Islands – communities connected by the Pacific Ocean – are already mobilising their communities to relocate.

**Newtok** in western Alaska is a Yup'ik Eskimo village located near the Bering Sea where approximately 400 residents reside in about 60 houses. The Ninglick River borders Newtok to the south. No roads lead to or from the community. A combination of extreme weather events, thawing permafrost and decreased Arctic sea ice is accelerating erosion, moving the Ninglick River closer to the village.

Six extreme weather events occurred between 1989 and 2006. These storms repeatedly flooded the village water supply, caused raw sewage to be spread throughout the community, displaced residents from homes, destroyed subsistence food storage, and shut down essential utilities. Public infrastructure that was significantly damaged or destroyed included the village landfill site, barge ramp, sewage treatment facility and fuel storage facilities. The barge landing, which allows for delivery of most supplies and heating fuel, no longer exists, creating a fuel crisis. Salt water is affecting the potable water.

The State of Alaska spent about \$1.5 million to control the erosion between 1983 and 1989. Despite these efforts, erosion associated with the movement of the Ninglick River is projected to reach the school, the largest structure in the community, by about 2017.

In 1994, the Newtok Traditional Council (NTC) analysed potential relocation sites to start a relocation planning process. After Newtok's inhabitants voted to relocate to Nelson Island nine miles to the south, NTC obtained title to the preferred relocation site – which they named Mertarvik – through a land-exchange agreement negotiated with the US Fish and Wildlife Service. The Newtok Planning Group was created in 2006 to coordinate the relocation effort and the NTC unanimously approved a set of guiding principles, based on the Yup'ik way of life, to guide the relocation to Mertarvik. These include:

- Remain a distinct, unique community – our own community.
- Make decisions openly and as a community and look to elders for guidance.
- Build a healthy future for our youth.
- Our voice comes first – we have first and final say in making decisions and defining priorities.
- Development should: reflect our cultural traditions; nurture our spiritual and physical wellbeing; respect and enhance the environment; be designed with local input from start to finish; be affordable for our people; hire community members first; and use what we have first and use available funds wisely.

Construction began at the relocation site in 2009, and these guiding principles govern every aspect of the relocation process.<sup>1</sup>

**The Carteret Islands**, comprising seven atolls, are within the jurisdiction of the Autonomous Bougainville Government in eastern Papua New Guinea. As with Newtok, erosion has plagued the Carteret Islands for decades. Despite the construction of sea walls and planting of mangroves to protect against the sea, more than 50% of their land has eroded since 1994. 'King tides' inundate the land, creating swamps where malarial mosquitoes breed. Areas that previously



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held food gardens are now under water, causing a food shortage. Saline intrusion is destroying the drinking water supply.

In September 2007, the Council of Elders of the Carteret Islands formed an NGO called Tulele Peisa ('Sailing the Waves on Our Own'). Tulele Peisa developed

the Carteret Integrated Relocation Project (CIRP), a community-led relocation model, to coordinate the voluntary relocation of Carteret Islanders to Bougainville Island, 100 kilometres to the north-east. The first

group of Carteret Islanders began to relocate in 2009 to Tinputz on Bougainville Island to land allocated by the Catholic Church. The location of the relocation site is critical because Tulele Peisa wants to ensure there is sufficient land for the Carteret families to be economically self-sufficient and have secure food resources. Maintaining access to their traditional fishing grounds is also important so that people can still rely on this food source even though they no longer reside on the Carteret Islands. Working with the host communities – which are culturally, politically and socially different from the Carteret Islanders – has been a critical component of the relocation programme. The CIRP therefore seeks to ensure that the host communities will benefit from the relocation through upgrading of health facilities and schools.

#### From protection to relocation

The duty to protect arguably extends to responsibility for implementing adaptation strategies. Communities will need a continuum of such strategies and the ability to respond dynamically – from protection in place to community relocation – in order

to adapt to climate-induced environmental change. Disaster and hazard mitigation are critical components in order to assess vulnerabilities and develop disaster mitigation strategies where protection in place is possible. Unlike government-mandated relocations associated with infrastructure development

projects which are the catalyst for population displacement, there are no standardised mechanisms or criteria to determine whether and when populations need to be relocated due to environmental change. And no method

currently exists to determine whether and when a community can no longer be protected in place and must relocate.

Social-ecological indicators can be used to assess vulnerability and guide the design of adaptation strategies for communities and government agencies in order to transition from protection where they are to community relocation. In Alaska, government agencies have proposed using the following indicators: (1) risk to life or safety during storm or flood events; (2) loss of critical infrastructure; (3) threats to public health; and (4) loss of 10% or more of residential dwellings. Ecological factors would include, for example, the rates of erosion and sea-level rise and loss of drinking water due to salination. Extreme weather events which cause mass population displacement are not an appropriate indicator to use to evaluate whether people should be relocated. In the aftermath of an extreme event, most people want to return home and will, unless the land on which they lived no longer exists. In addition communities that have decided that relocation is the only feasible



Stanley Tom of Newtok, Alaska, explains the Newtok relocation to Sally Tiwari during a visit to the Carteret Islands relocation site, September 2012.

adaptation strategy will require a governance framework to authorise the expenditure of funds specifically for relocation.

These considerations support the creation of an adaptive governance framework which can respond dynamically to communities' needs as climate change affects habitability and residents' safety. A human rights framework is critical to the design and implementation of this governance framework to ensure that relocation only occurs when there are no other feasible solutions to protect vulnerable populations. If human rights protections cannot be realised because of inadequate resources or if governments do not have the technical expertise to carry out some of the tasks related to community relocation and need funding or technical assistance, then support for institutional capacity building through expansion or reform can be a part of the international obligations generated by the recognition of these rights.

#### **Human rights for relocating communities**

Existing human rights instruments fail to protect communities needing to relocate because of climate-induced environmental change; the 1951 Convention neither covers people who are not displaced across a border nor provides a mechanism to confer refugee status in this situation anyway. In addition, in this situation communities should still be able to rely on national protection to respond to their humanitarian crisis.

Neither the Inter-Agency Standing Committee (IASC) Operational Guidelines on Human Rights and Natural Disasters<sup>2</sup> nor the Guiding Principles on Internal Displacement<sup>3</sup> provide for the prospective needs of populations planning their permanent relocation nor do they provide any guidance on how communities can sustain themselves and create the necessary infrastructure to provide for basic necessities without the assistance of humanitarian aid.

The fact that these guidelines do not incorporate mechanisms for community self-sufficiency is a significant protection gap for

communities facing permanent relocation; in addition, both documents are based on the premise that displaced populations may be able to return to their original home.

Climate-induced environmental change will cause permanent population displacement. Enormous differences exist between policy and human rights protections for temporary and permanent population displacement.

#### **Protection of collective rights**

Climate-induced displacement will affect entire communities whose members will collectively need protection. International human rights conventions, such as the UN Declaration on the Rights of Indigenous Peoples<sup>4</sup>, recognise the rights of peoples collectively and that indigenous peoples have the collective right to the fundamental freedoms articulated in the Universal Declaration of Human Rights and in international law. Like these documents, any human rights instrument that addresses climate-induced population displacement must ensure the protection of collective rights. These rights include the right to relocate as a community, as well as the collective right to make decisions regarding where and how a community will relocate. No human rights protocol currently contains a community right to make these decisions.

For the residents of both Newtok and the Carteret Islands, the right to relocate as a community is the most important right to protect. The residents of each community are making all of the decisions related to the relocation effort to ensure that, despite the enormous loss of connection to the land on which they have each dwelled, they will be able to preserve their cultural heritage and ensure the long-term sustainability of their community.

A human rights instrument responding to climate-induced displacement must also ensure that human rights protections are extended to those living in communities which provide sanctuary for those displaced by climate change. In Papua New Guinea, Tulele Peisa has developed several programmes

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to ensure that host communities are involved in the relocation process, including providing funding for host community infrastructure so that the host community is not burdened by the increase in population.

As climate change renders entire localities uninhabitable, a governance framework based in human rights must be designed and implemented so that communities have the ability to relocate when disaster risk reduction strategies can no longer protect residents in place. In this way, an adaptation strategy can be created that facilitates an effective transition from protection in place to community relocation and that serves as a model for governments throughout the world.

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1. See also Robin Bronen 'Alaskan communities' rights and resilience', Forced Migration Review issue 31 on 'Climate change and displacement', 2008. [www.fmreview.org/climatechange](http://www.fmreview.org/climatechange)
2. <http://ochanet.unocha.org/p/Documents/Operational%20Guidelines.pdf>
3. [www.idpguidingprinciples.org](http://www.idpguidingprinciples.org)
4. [www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

## Migrants on offshore islands of Bangladesh

Rezwan Siddiqui

Riverbank erosion and the consequent formation of new islands in the Bay of Bengal cause frequent changes in the shape and size of the delta, forcing the inhabitants to migrate frequently. This kind of migration is as old as the history of people living in this region but when the new islands get overpopulated or start to erode, people have to move out to yet more remote islands. With insufficient resources to enable them to move to a better place, they migrate to worse or more vulnerable places — where they become even more vulnerable economically, socially and environmentally than they were before. Cyclones, storm and tidal surges and increased salinity exacerbate their hardships.

Char Nizam Kalkini is a remote offshore island with an area of 3.57 sq km, discovered in the mid-1980s, since which time people started to live there. This island does not even exist on the administrative map. At present around 250 families live on Char Nizam Kalkini, and every year a further 10 to 15 families move to the island. The island is regularly flooded and is extremely vulnerable to cyclones and associated storm surges; there is only one fragile shelter to provide protection. These people are trapped

within a circle of bad fortune by their poverty and the natural hazards of the region. The people living on Char Nizam Kalkini are landless families who have lost their houses and lands to riverbank erosion and other natural disasters. Families living here are so poor that they even do not have sufficient assets to move towards towns or cities to better their livelihoods.

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A family has gathered all its household materials in preparation for moving to a more remote island. The household head said that none of his family wanted to go as the island is frequently flooded and the threat of cyclone and storm surge is greater there.

## Illegal migration in the Indian Sunderbans

Sahana Bose

It is expected that due to sea-level rises in the future many millions of Bangladeshis will flee to India, exacerbating further the ongoing disputes between India and Bangladesh. Human security will be the most important agenda item for Indian-Bangladeshi relations in the coming decades.

Environmental crisis and the increasing impacts of climate change in Bangladesh have become important causes of cross-border migration to the Indian Sunderbans Region (ISR) where loss of lands and habitats are the two major issues due to sea-level rise in recent years. The coastal populations are constantly migrating from one island to another in search of food and shelter. There is a steady influx of Bangladeshi migrants into this region who could be termed 'crisis migrants', entering into ISR illegally in anticipation of threats in their own country and eventually becoming trapped by humanitarian crisis.

Frequent floods, tropical cyclones and storm surges have had a colossal impact on Bangladesh's coastal population. Shrinkage of land area, river bank erosion and intrusion of saline waters into the agricultural fields have pushed farmers in search of new lands. These are causing widespread landlessness, unemployment, income disparities and degradation of human habitat. No rehabilitation programmes exist and there is extremely poor participation of the majority of the people in decisions that affect their lives.

Two types of climate-induced migrants are found: 1) Indian Sunderban dwellers constantly migrating from one island to another and 2) rural Bangladeshis infiltrating through the porous border — recognised neither by their government as Bangladeshi citizens nor by India as 'climate refugees'. The Bangladesh government does not stem the flow of migrants and does not take back those identified as illegal migrants. Such forced migration from Bangladesh symbolises the failure of official adaptation to climate change; at present, migration issues are not effectively mainstreamed with Bangladesh's environmental, disaster management or climate change policy, and there are therefore no policies for climate refugees.

Because of the supply of cheap labour from Bangladesh, political parties in the Indian border states encourage this illegal infiltration. However, the humanitarian concerns are

overwhelming for both India and Bangladesh.

People smuggling is flourishing, with a deeply entrenched network on both sides of the border.

### Policy recommendations

- The opening of a legal channel of migration may be the most feasible option, allowing entry of migrants and providing them with a pass that would entitle them to receive the minimum wage and other entitlements of Indian workers. Thailand has such Memoranda of Understanding with Burma, Cambodia and Laos that entitle migrant workers in Thailand to receive equal wages and benefits.
- Climate change adaptation requires assessment of vulnerability and proper mitigation planning to minimise the impacts of sea-level rise. In 2005 a Coastal Zone Policy adopted in Bangladesh laid the foundations for the management infrastructure on which better coastal management can be built.
- India must offer humanitarian assistance to these effectively stateless people through bilateral negotiations with Bangladesh. India may absorb some of these crisis migrants or give them the status of refugees.
- India and Bangladesh should work bilaterally to solve this issue. The difficult part for India will be to deal with the Bangladeshis who remain in India. The difficulty also lies in persuading Bangladesh to accept that illegal migration is an issue that needs to be addressed.
- India and Bangladesh should work jointly on climate change adaptation to preserve the world's largest mangrove forest in the Sunderbans.

The issue of illegal migration has embittered Indian-Bangladeshi relations time and again. The global community needs to extend support to climate refugees and assist them in obtaining protected status under international law.

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## Resettlement in the twenty-first century

Anthony Oliver-Smith and Alex de Sherbinin

**Deficiencies in planning, preparation and implementation of involuntary resettlement and relocation projects have produced far more failures than successes. Indeed, it is questionable whether resettlement as currently practised could be categorised as a form of protection.**

Anticipating that there will be an increase in involuntary population displacements in this century, some have called for greater attention to organised resettlement or planned relocation as possible responses. On the positive side, relocation potentially represents an important protection for vulnerable communities that would otherwise receive no assistance or support. On the negative side, the track record of resettlement associated with large infrastructure and development projects has been poor. The fact, however, that results for disaster-induced displacement and resettlement have been marginally better suggests that there is hope.

There appear to be two broad explanations for why resettlement so often goes wrong. The first is a lack of appropriate inputs such as legal frameworks and policies, funding and care in implementation. The other is that the resettlement process emerges out of the complex interaction of many cultural, social, environmental, economic, institutional and political factors in ways that are not predictable and that are not amenable to a rational planning approach. This in fact may create a space for resettlers to take greater control over the process.<sup>1</sup>

Formal development-forced displacement and resettlement (DFDR) projects require adequate material inputs up front and, since adjustment to resettlement transpires through multiple stages and over extended periods of time, eventually resettled communities themselves must also mobilise social and cultural resources in their efforts to re-establish viable social groups and communities and to restore adequate levels of material and cultural life.

Resettlement has actually been employed by responsible authorities in disaster recovery for centuries. In some cases, disasters and other

environmental disruptions will force people to migrate as individuals and families, similarly to political refugees, with little community-based resettlement efforts on their behalf. However, in other cases community-based resettlement has been undertaken for disaster-affected people in projects that involved planning processes – but usually only when no risk mitigation was possible. However, such efforts have rarely met with success.

Post-disaster resettled populations often abandon the new settlements and return to previous home sites for a wide variety of environmental, economic, social and psychological motives. Part of the blame for these failures has been due to failures in design, construction, implementation and delivery of the resettlement project itself, and these problems generally derive from a lack of consultation with, and participation by, the affected people. This lack is generally due to a disparagement of local knowledge and culture on the part of policymakers and planners.

Understanding the role of social institutional processes, such as governance or social networks, in resettlers' adaptive strategies is crucial for identifying the socio-culturally specific nature of the impoverishment risks, thus helping to explain why displacement and resettlement so often result in greater impoverishment of affected households. People who move to escape persecution or death, or who are displaced by disasters or by development projects, share many similar challenges and may generate similar responses over the long term in affected peoples.

Gender, age, class and ethnicity have been clearly identified as key markers of vulnerability. Systemic forms of vulnerability and exposure and their tragic outcomes are



frequently linked to unresolved problems of development. Since resettlement should focus on durable solutions, to ensure successful resettlement outcomes resettlement projects must be configured as development projects.

### Existing and emerging guidelines

In recent years the Inter-Agency Standing Committee's (IASC) Operational Guidelines on the Protection of Persons in Situations of Natural Disasters<sup>2</sup>, and the *World Bank's Populations at Risk of Disaster: A Resettlement Guide and Preventive Resettlement of Populations at Risk of Disaster: Experiences from Latin America*<sup>3</sup> have attempted to address the issue of disaster-related resettlement in terms of human rights and good practice guidelines.

The IASC Guidelines adopt a human rights-based approach to help protect populations threatened or afflicted by disasters and are intended to complement existing guidelines on humanitarian standards in disasters. The guidelines are organised by thematic grouping through the time phases of the disaster: protection of life; protection of rights related to food, health, etc.; protection of rights related to housing and livelihoods; and protection of rights related to freedom of movement and religion. The Guidelines also highlight areas where these rights are threatened by the resettlement process. However, they do not provide a set of measures, guidelines or good practices in resettlement to ensure that these rights are safeguarded in and by the resettlement process, where, in fact, they are frequently violated. While not formally recognised as guidelines *per se*, the World Bank volumes, together with its *Involuntary Resettlement Sourcebook*<sup>4</sup>,

constitute a major source of knowledge on the implementation of resettlement.

There are still no globally binding agreements or treaties that guarantee the rights of people who have been uprooted by causes such as climate change, environmental disruption, disasters or development projects. And while there are advocates for the construction of a new global governance architecture for the protection and voluntary resettlement of people displaced by sudden or gradual alterations in their natural environment by sea-level rise, extreme weather events and drought and water scarcity, they generally do not address resettlement with any specificity.

The general lessons from DFDR studies are that resettlement should always be considered a last resort; should always be adequately funded, well-planned ahead of time, with trained staff operating under clear lines of authority; should include income-generating activities and land provision and adequate housing; and should consider the rights of affected communities.<sup>5</sup> Based on these principles, Elizabeth Ferris further recommends that a consultative process be established to develop specific protection principles

and concrete guidelines that will be useful to all stakeholders, including affected peoples, development and humanitarian actors, and governments who may be obliged to consider resettlement as an adaptation to climate change.<sup>6</sup>

There is no agreement as yet on guidelines for anticipatory or preventive resettlement (that is, resettlement in advance of significant impacts), or indeed by what criteria such resettlement might be deemed necessary. The lack of a clear internationally accepted definition of uninhabitability of a place and the likelihood



Haitians wade through the flooded streets of Gonaïves after Hurricane Hanna caused severe flooding, 2008.

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that such conditions would be due to multiple factors make it difficult to determine both causality and responsibility. Furthermore, it is unclear whether residents of a risk-prone area should be moved in advance of potential impacts, given uncertainties concerning timing and magnitude or the success of potential adaptation mechanisms, or whether it is best to wait until after a major disaster occurs. In such cases, there is a need to reconcile the ethics of policies that remove people from high-risk areas with the potential that they will undermine historical freedoms and longstanding cultural patterns of settlement, mobility and livelihood.

The risk that vacated lands might be appropriated for financial gain or that resettlement might be used as a tool against politically marginalised peoples suggests that criteria and guidelines are needed, lest anticipatory resettlement lead to an unforeseen number of unwanted outcomes. Yet even in the best of circumstances, it may be difficult to muster the necessary political will or resources in the absence of a major disaster, and indeed residents may be very reluctant to leave an area even if the probability of a disaster occurring is high.

### Conclusions

It cannot be expected that traditional refugee-receiving countries will open their arms to potentially large numbers of environmentally displaced peoples or so-called climate refugees.<sup>7</sup> Given anticipated levels of climate-related displacement, the question of adequate available land for resettlement will become crucial in both urban and rural contexts. Procedures for establishing ownership and clear legal title, both traditional and formal, must be established, and legal instruments and procedures must be developed.

Financing also becomes a central issue. The normative frameworks for protecting human lives while also guaranteeing human rights are the gold standard, yet the governments of most developing countries, where significant climate impacts are projected to occur, may have the fewest resources to prepare and implement them. Developed countries will be

reluctant to assume the costs of resettlement, even given responsibility for past emissions, although a discussion on 'loss and damage' has started within the UN Framework Convention on Climate Change, opening the door for discussions of compensation for damages from climate change owing to developed country emissions, which may include national or international resettlement.

A key element to improvement in resettlement practice will be the recognition that the displaced must be seen as active social agents with their own views on rights and entitlements, which have to be considered in any displacement and in the planning and implementation of resettlement projects. Resettlement is a complex social process; at its best it should support and nourish the coping and adaptation processes that enable a population to regain the functionality and coherence of a viable community, resilient enough to deal with social and environmental stressors. Central to these tasks are the issues of rights, poverty, vulnerability and other forms of social marginality that are intrinsically linked to displacement. Yet planners have often perceived the culture of uprooted people as an obstacle to success, rather than as a resource.

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## Adolescence, food crisis and migration

Janis Ridsdel

**Adolescents who migrate because of food crises face distinct risks. Specific strategies are needed to prevent and respond to this phenomenon.**

At times of crisis related to drought and ensuing food shortages, most child-focused actors have looked primarily at the youngest children, and specifically at the problems of widespread malnutrition, high infant mortality rates and the large number of drop-outs from primary school. Little attention has been paid to older children, and in particular to the dynamics of labour, migration and

affected by food crisis who rely predominantly on agriculture for food and for income are forced to find alternative sources of revenue when harvests fail. Adolescents are often called upon to support their families in these times of crisis. In Burkina Faso, 81% of boys and 58% of girls reported that they had to undertake work due to the food crisis compared to 75% of boys and 42% of girls before the food crisis. In Niger, the percentage of adolescents reporting undertaking work during the crisis almost doubled compared to levels before the crisis – from 31% to 60%. Furthermore, whereas before the food crisis many children would have been involved in agricultural work close to home, the onset of crisis pushes families to send adolescents outside their communities to find paid work.



Plan International/Shona Hamilton

Niger

violence that affect this group. Adolescent children – those between the ages of 10 and 18 – are more at risk of becoming separated from their families and being exposed to violence, exploitation and abuse, often in connection with migration from affected areas in order to look for work. However, in spite of this there has been little consideration of the impact and the specific measures needed to reach adolescent children.

In order to find out more about the experiences of adolescent children affected by food crisis, Plan International in West Africa recently conducted research on the impact of food crises on the protection of adolescent girls and boys in Burkina Faso and Niger.<sup>1</sup>

A major finding concerned the pressure on adolescents – and especially boys – to migrate or travel in order to find work. Families

In Burkina Faso, 17% of adolescent boys and 10% of adolescent girls reported that they had been obliged to move due to the food crisis. In both countries, adolescent boys moved to larger towns and even abroad to seek jobs as manual labourers or street vendors. Boys also sought work on mining sites. Working on a mining site did not necessarily require children to migrate but rather to travel back and forth periodically, with boys especially likely to spend nights at mining sites. Girls were more likely to stay within the community, undertaking a greater share of unpaid domestic labour, including gathering food or caring for younger children.

Migration and movement for work also appeared to go hand in hand with exposure to violence as adolescents moved without adults to protect them. In Burkina Faso, 26% of adolescent boys interviewed, compared to just 2% of girls, declared they had been a victim of violence at least once due to the impact of the food crisis. In discussions, it was found that this related primarily to exposure to violence on mining sites, where adolescents

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could be attacked by older miners looking to steal their findings. In addition to exposure to violence, the work itself could often be dangerous and hard. While fewer children who worked in cities or abroad were present during the study, the accounts of their parents and peers echo other studies that suggest that these children too are more likely to be exposed to violence and exploitation.<sup>2</sup>

The feeling of marginalisation amongst these children was emphasised. Children who had moved to towns and cities or abroad were reported to face significant difficulties, often working illegally in countries and cities with different cultures and values to their own, thus exposing them to violence, harassment and exploitation. Adolescents and their communities in this survey were also not aware of any initiatives in their communities or at their destinations aimed at preventing and responding to violence resulting from the food crisis.

The increase in children engaging in work was, not surprisingly, accompanied by a decrease in children going to school. However, the contributions made by adolescents at times of crisis are considered very important and essential for the survival of families. Adolescents themselves did not dwell on their future or their own situations or problems but seemed to accept the need to take on additional responsibilities as part of the natural order of things. On the whole, the role of adolescents as breadwinners did not appear to be enforced by adults. As one adolescent girl remarked, simply, "We're aware that there's nothing to eat if we don't work."

Interestingly, the fact that food crises impelled many adolescents to take up new roles in the family as breadwinners in some cases afforded them a greater say in family and community decision-making – for many girls and boys, the onset of a food crisis means an abrupt end to their childhood. The pressure on adolescents is significant and has consequences for their physical and psychological development; many boys and girls interviewed over the course of the study

spoke of their desperation and hardships due simply to the fact that they were facing extreme poverty and hunger. The darker side of the new responsibilities of adolescents was also reported in increases in risky behaviour – in particular, exposure to prostitution and drugs.

### **Dearth of responses**

In spite of the significant and specific impact of food crises on adolescents, there appear to be few if any programmes designed to respond to their needs. The participation of adolescents in humanitarian assistance programmes designed for adults also did not appear to respond to their specific needs. Food for work and cash for work programmes in the areas assessed in this study were also reported to have had little effect in preventing adolescent migration. In particular, since adolescents under 16 are not allowed to participate in these projects, migration for work was one of the only viable strategies for them to increase family income.

Discussions of food crises in the humanitarian world seem to revolve these days around the concept of resilience. Yet within this debate little place is given to issues of migration, protection and education. Furthermore, humanitarian responses to slow-onset food crises have typically not invested in preventing and responding to the specific issues affecting adolescents, including the pressures on adolescents to migrate out of their communities to find work. In addition to the negative impacts this has on individual children in terms of their exposure to violence and the consequences on their mental and physical health and development, there are also long-term consequences for community development in areas vulnerable to food crises. The pressure on adolescents to take up low-skilled work as a short-term coping strategy traps communities in a vicious cycle of poverty as children are unable to complete basic education or access opportunities for skilled employment.

Future efforts to build resilience in areas vulnerable to food crisis need to consider initiatives that not only aim to reduce the vulnerability of household livelihoods but

also proactively support adolescents as key actors in their households and communities in times of crisis. For example, supporting adolescent children to develop skills in diverse income-generating activities such as poultry farming or vegetable gardening that can be maintained alongside school attendance could not only encourage parents to send children to school but also reduce the pressures on children to migrate to find work.

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## Criminal violence and displacement in Mexico

Sebastián Albuja

**Rampant criminal violence, from direct coercion and physical threats to the erosion of the quality of life and livelihood opportunities, pushes people to move in a variety of ways. Not everyone forced to move has equal access to protection or asylum.**

According to official Mexican government information, 47,000 people were killed as a result of the wave of intense criminal violence which started in 2007. Civil society estimates put the figure as high as 70,000 in April 2012. Displacement of civilians has been a significant effect of the drug war in Mexico.

Civil society organisations, academic institutions and the media have progressively begun to document cases and patterns of forced displacement caused by drug-cartel violence, seeking to untangle the different forms of human mobility and distinguish migration that is forced from migration that is not. Overall, the proportion of people leaving violent municipalities is four to five times higher than that of people leaving non-violent municipalities with similar socio-economic conditions. In addition to displacement of Mexicans, the safety of Central and South American migrants making their way to the US through Mexico has become greatly threatened as a result of increased insecurity and drug-cartel violence. It has been estimated that 70,000 Central and South American migrants have disappeared since 2007 while crossing through Mexico.<sup>1</sup>

This context begs the question: at what point does criminal violence give rise to a humanitarian crisis? The intensity and

pervasiveness of the violence in Mexico certainly poses a widespread threat to life: between 50,000 and 70,000 people killed in a six-year period is by any measure an enormous loss of life. Furthermore, systematic and large-scale kidnapping of migrants as well as mass murders of migrants present a widespread threat to life and physical security and constitute a humanitarian crisis. Finally, the violence has also been associated with loss of livelihoods and subsistence, which pushes people to leave.

While violence and insecurity need not occur in the context of an internal armed conflict in order to constitute a humanitarian crisis, the existence of a conflict would reinforce the view that Mexico's situation of violence does amount to a humanitarian crisis. In fact a *prima facie* analysis of Mexico's violence under criteria established by IHL shows that the situation meets most of the criteria for the existence of a non-international armed conflict, despite the fact that Mexican drug cartels do not have a political agenda or an ideology.

**What protection do existing legal frameworks offer?**

Acts that violate criminal law (including robbery, assault, rape and murder) occur in every society and are predominantly dealt with through retributive justice



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focusing on punishment of offenders but they largely neglect crime's impact on victims. This neglect of victims, including those who migrate as a result of criminal violence, is significant in contexts of intense criminal violence such as Mexico's.

The existing international protection framework – the various universal, regional, binding and non-binding instruments of refugee law, IHL and human rights law – provides the desired emphasis on the rights, needs and vulnerabilities of victims, including those who move as a result of criminal violence or are affected by it. But the protection structure's focus on forced or coerced movement as the trigger does not adequately respond to the complex mobility circumstances of people in contexts of criminal violence.

The descriptive identification of people who may be IDPs in the Guiding Principles on Internal Displacement includes persons who flee "situations of generalized violence." The situation in certain localities in Mexico may be understood to be one of generalised violence. Under the Guiding Principles, there must be coercion for people to be considered IDPs. But in some situations, people move after their source of income has declined or become less sustainable as a result of the pervasive climate of violence and insecurity. For example, some people in Ciudad Juárez have moved because their small businesses became less profitable or threatened to fold when, due to violence and insecurity, people stopped shopping or eating in the neighbourhood where the businesses are located. In these cases, while people have not been directly coerced to move, their choice to move is not entirely free either.

A broad interpretation of the Guiding Principles may provide relief to people in this situation. People who move seeking a source of income but who would have not chosen to move were it not for the negative impact of insecurity and violence on their livelihoods – in other words, they do not move solely to improve their economic circumstances as a free choice – would warrant protection as

IDPs on the grounds that they were forced to move because of the climate of insecurity.

People crossing borders seeking safety and security as a result of criminal violence, whether as a direct consequence of it or anticipating threats, are specifically covered by the expansive definition of a refugee in the 1984 Cartagena Declaration, which includes people who flee the threat posed by "generalized violence, ... massive violation of human rights or other circumstances which have seriously disturbed public order".<sup>2</sup> Under the 1951 Refugee Convention protection is available on a case-by-case basis to those who can show a well-founded fear of persecution based on one of the five grounds enumerated in the Convention.



Homes abandoned by IDPs and vandalised by criminal groups in El Porvenir, Chihuahua, 2010.

Complementary protection may also offer relief to people who have fled criminal violence but the threshold above which it is applicable – under the Convention Against Torture (CAT), for example – makes this an even narrower avenue for protection.<sup>3</sup> Asylum seekers could also benefit from complementary protection under the Convention for the Protection of All Persons from Enforced Disappearances, Article 16 of which prohibits the *refoulement* of individuals to a state where there is a risk of them being subjected to enforced disappearance.<sup>4</sup>

Regional human rights instruments also provide a potential avenue for protection. The

European Qualification Directive provides for a similar prohibition from return in Article 2(e) on subsidiary protection. This article applies to third-country nationals and stateless persons who do not qualify as refugees but who are in need of international protection and who, if returned to their country of origin or residence, are at a risk of suffering “serious harm” i.e. death penalty or execution; torture or degrading treatment or punishment; or “serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict”. The extent to which the situation in Mexico can be regarded as an internal armed conflict thus has an impact on the applicability of this form of relief.

**Protection inside Mexico and asylum in the US**  
Response to internal displacement in Mexico itself has been limited predominantly because of a lack of will to acknowledge the issue and address it systematically. The Mexican government has yet to fully acknowledge that cartel violence is causing people to move (under coercion or not) and has not put in place any mechanisms to respond to displacement since the violence broke out.

Two exceptions are the Office for the Victims of Crime (Províctima), which was created by Presidential Decree in September 2011, with a mandate to assist people affected by kidnapping, forced disappearance, homicide, extortion and human trafficking, and the National Human Rights Commission which has, since 2011, taken the complaints of people displaced by violence, and is in the process of drafting a protocol to guide its attention to IDPs.

Although the Federal Government is powerful and professionalised, it may have little inclination to request support from foreign and multilateral humanitarian agencies, whose intervention is much needed at the local level. Local governments in whose jurisdictions the violence takes place are resource-poor, plagued with corruption and co-opted by the very illegal groups they are supposed to fight. They are thus

utterly unable to provide protection to the populations affected by the violence.

The response of US authorities to asylum claims linked to drug-cartel violence in Mexico serves as an example to examine the potential for protection that the refugee regime offers to people fleeing criminal violence across borders. The statistics of successful asylum claims by Mexicans seeking asylum as a result of drug-cartel violence, on the one hand, and the legal reasoning supporting court decisions, on the other, suggests that this avenue is limited as a form of protection.

The majority of 203 appeals cases analysed were rejected for failure to show a well-founded fear of persecution. Petitioners – predominantly in cases of defensive asylum claims pending removal from the US – attempted unsuccessfully to argue that they were part of a social group persecuted by organised crime.

Cases that argued fear of generalised violence or unstable country conditions as the reason for fleeing and as grounds for asylum were rejected. Courts ruled that fear of “general country conditions” or “indiscriminate violence” was not ground for asylum, unless victims are singled out on account of a protected ground. The cases that were successful had specific evidence (names of cartel or police members, hospital or police reports, and witness testimony). They also could demonstrate and articulate why and how they feared persecution (i.e. who would harm them).

### Conclusions

A hallmark feature of environments where criminal violence is rampant is that it pushes people to move in a variety of ways, from direct coercion and physical threats to the erosion of the general environment and quality of life, to shrinking livelihood opportunities. Criminal violence causes and affects human mobility in Mexico, creating – in its intensity and pervasiveness – a humanitarian crisis. Therefore there

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needs to be a fundamental shift in responses by concerned states and the international community, from punishing or defeating the offenders to giving full weight to the needs of victims, including migrants.

The existing international protection framework provides such a focus on the needs and vulnerabilities of people moving as a result of criminal violence. Through new interpretations of existing legal norms, people who do not clearly fall within the existing legal categories could potentially find protection. A broad interpretation of the Guiding Principles could include as IDPs people who flee without direct coercion but who do not move out of free choice either. Likewise, innovative interpretations of the grounds for asylum in the Refugee Convention could provide relief to people in these situations.

However, even if interpretation of existing frameworks may in principle offer protection, practical implementation remains the biggest challenge. In the absence of a state response for people displaced by violence in Mexico, humanitarian agencies should engage to protect people affected and displaced by violence. But situations of

insecurity caused by criminal violence often fall outside the mandates and mission statements of humanitarian agencies; among the international agencies currently in Mexico, no agency has thus far set up programmes to respond to the impacts of criminal violence on local communities. And up to now, the Mexican government has not sought cooperation from international agencies in relation to drug-cartel violence; to do so would be to acknowledge that the country faces a humanitarian crisis or is in the grip of an armed conflict.

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## Mexicans seeking political asylum

Leticia Calderón Chelius

The militarised struggle against drug cartels in Mexico that began in 2008 triggered an unprecedented increase in human rights violations against the population which found itself caught between the criminals and the armed forces and police. This in turn led to a mass exodus, with 230,000 people leaving the border region between 2007 and 2010 and some 20,000 dwellings abandoned. Many of these people had come from other parts of Mexico and returned to their home areas.

An estimated 124,000 people or more of those who decided to move crossed into Texas in the US; in the great majority of cases they had no intention of immigrating into the US before this episode of violence but were forced to flee from fear.

Crossing the border opens up legal issues that people seeking temporary refuge do not imagine. This is important in light of current heated debates in Mexico over internal displacement resulting from violence in the country. Crossing the border seems not to be a strategic choice but a practical one based on geographical proximity. Yet by doing so these people simply disappear from the IDP statistics, seeming to have joined the millions of Mexicans who have emigrated over many decades because of poverty and insecurity. In this way the problem of forced displacement is minimised and neutralised.

In 2009, there were 254 Mexican asylum seekers in the US. In 2010 there were 2,973, and in 2011 6,133 of whom only 104 – 2% of those requesting it – were

granted asylum. In mid-2012 a group formed in the US calling themselves 'Mexicans in Exile'. Some 160 people decided that, having fled assassinations, extortion, disappearances and fear, rather than remain isolated and maintain a low profile a better strategy would be to publicly and visibly seek political asylum on the grounds that their cases had political bases.

Banding together in response to a situation of this seriousness gives people strength and confidence,

and provides emotional, social and – above all – legal and political support. Mexicans in Exile empowers its members and allows them to transcend the personal, demanding international justice for their situation in recognition of the difference between migrating out of fear and seeking political asylum.

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## Mexico: from the Guiding Principles to national responsibilities on the rights of IDPs

Fernando Batista Jiménez

**The Mexican government needs facts and figures on internal displacement and then to mobilise national institutions to design appropriate responses.**

On 3 August 2013, the staff of Mexico's National Commission on Human Rights (CNDH) travelled to the municipality of Tlacotepec where, according to information provided by local authorities, approximately 700 persons had been displaced from various communities as a result of the fear of violence arising from organised crime.

In this, as in other cases documented by the CNDH, being forced to abandon a region, municipality or place of residence means undertaking a dangerous, exhausting journey, the loss of capital, and impoverishment, all within the framework of an uncertain future. However, displacement can also be indicative of hope in the quest for protection and security for the individual, even sometimes undertaken preventively to avoid worse consequences.

In Mexico, the CMDH has documented cases of displacement resulting from communal conflicts, natural disasters and violence, as well as probable displacements caused by major development projects in which the principles of consulting the communities in which they are intended to be carried out are not respected.

Displaced persons are immediately up against the need for shelter and lodging, drinking water and food; guarantees for their physical safety and that of their family; access to basic hygiene, along with medical and psychological services. Frequently, as a result of having abruptly abandoned their place of origin, they do not have any identity documents with them, which limits full access to enjoyment of their civil rights (work, education, social welfare and property, amongst others).

In the longer term, they will be faced with the choice of whether to return to their place of origin, establish themselves in the host community, or even move further on to a new location. If they choose to return to their communities of origin, they will face the challenge of discovering what has happened to their properties during their absence (this may even include finding that they no longer physically exist, or that they have been occupied by someone else), as well as having to fit into a new social framework. If they decide to settle in the host community or to relocate, they must integrate into a new society, where it will be necessary to create new networks and,

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possibly, to face situations of rejection or discrimination. The greatest challenge will be to find lasting and sustainable solutions for the displaced population.

Hence the Mexican national ombudsman has stressed that “the authorities have the duty and responsibility to provide protection and humanitarian assistance to the [displaced] population found within the territory, with no discrimination whatsoever, being obliged to provide special attention to those at risk of vulnerability, such as children, disabled persons, elderly people and women.”<sup>1</sup>

In order to establish a public policy on internal displacement, it is necessary for each national institution to identify its responsibilities towards IDPs and for a coordination mechanism to be established in order to prevent the duplication of functions and to ensure prompt and efficient emergency response.

At present, most of the internally displaced persons in Mexico are not recognised as displaced and in most cases are not settled in specifically designated and equipped camps or locations. Instead, they are settled with host families, or in temporary shelters. These dynamics of mobility in the settlement patterns imply significant challenges in the collection of statistics, and also in the monitoring of displaced persons, not least because of the reluctance of displaced persons to talk about their displacement. Given the scale of the efforts being made by the present government to develop tools to quantify this problem, it would be advisable for the Mexican state to carry out a specific programme on internal displacement from within the Mexican legal framework and in accordance with the competences of national entities, taking into account the voices of civil society entities working with the issue, as well as the displaced persons themselves. Such a programme should also ensure a disaggregated perspective, that is, ensure the visibility of specific vulnerabilities of groups and individuals that require prioritising in terms of actions

to enable the effective and comprehensive realisation of their fundamental rights.

As a starting point in the creation of this programme, it is important for there to be a national process to determine figures on internal displacement in Mexico in order to identify the patterns, causes and extent of the issue. Producing diagnostics opens the door to recognition of the issue and constitutes a fundamental tool in building effective public policies and programmes. To this end, studies identifying issues confronted during displacement should be promoted, as should those looking into the social, economic, legal and political consequences of this phenomenon in the country.

Measures must also be considered in terms of legal aid for the displaced population in order to guarantee investigation of what occurred, the restoration of threatened rights, defence of affected property, and voluntary return to the place of origin in safe and dignified conditions, or, if appropriate, relocation. Such a service programme should be designed with activities and indicators to enable the programme to be monitored. The participation of state and municipal governments in this programme is of fundamental importance, as policy on the issue must be built upon a feeling of shared responsibility for development.

Finally, given the most recent waves of displacement due to violence, there is an imperative need for the development of tools for building peace as a necessary precondition for the achievement of lasting solutions.

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1. Raul Plascencia Villanueva, president of the National Commission on Human Rights. [www.cndh.org.mx/sites/all/fuentes/documentos/PalabrasRPV/20120305.pdf](http://www.cndh.org.mx/sites/all/fuentes/documentos/PalabrasRPV/20120305.pdf) (Spanish only)

## Rising waters, displaced lives

Lindsey Brickle and Alice Thomas

**Although Pakistan and Colombia have relatively advanced disaster management frameworks, they were unprepared and ill-equipped to assist and protect people displaced by recent floods.**

Weather-related disasters, especially floods, are responsible for the largest natural disaster-induced displacements each year. Climate change is likely to exacerbate flooding and its impacts on displacement in coming decades.<sup>1</sup> In 2010, flash floods in Pakistan affected more than 18 million people, nine million of whom were left homeless. Meanwhile in Colombia, in December 2010 93% of the country's municipalities were experiencing floods and landslides, and by the end of 2011 close to five million people had been affected and thousands displaced, sometimes on several occasions. Significantly, these floods occurred in two countries that had extensive displacement from protracted and ongoing conflict which increased vulnerabilities and challenges.

Both Pakistan and Colombia had relatively advanced disaster management frameworks in place at the time the floods hit. Nonetheless, in both countries insufficient capacity and coordination – especially at the local level – undermined the possibility of a more timely and effective response to displacement.

In the case of Colombia, a new flood relief system with significant financial resources (Colombia Humanitaria) did not aim to bolster existing government capacity but rather to bypass it. In Pakistan, the National Disaster Management Authority (NDMA) had few staff, a limited budget and no authority over the Provincial Disaster Management Authorities (PDMAs). In both countries, lack of implementation of disaster management laws and procedures at the local level significantly hampered the response as local authorities were not only the first, but sometimes the only, responders.

The fact that the floods in both countries rolled out over extended periods meant that different

types of movements – including emergency flight and evacuation, return and, to some extent, resettlement – occurred simultaneously in different parts of the country. Yet overall, despite the overwhelming numbers of people displaced, the period of displacement proved to be relatively short-term, with most people returning within a year; people were not precluded from returning by the threat of on-going violence, and many returned even before the flood waters dissipated. However, the quick rate of return was not taken into account in the response which was overly focused on providing assistance to flood-displaced in centralised IDP camps. As one UN official noted, “By the time we finished setting up the camps, they were empty.”

Meanwhile, returning populations faced many of the same needs and vulnerabilities as when they were displaced. Most returned to houses and belongings that were severely damaged or destroyed, and were forced to live in unsafe, makeshift shelters next to their former houses without access to clean water or sanitation. The same UN official added, “We needed a returned strategy, not a return strategy.”

Given the rapid rate of return, ‘early recovery’ programmes should



Road damaged by floods in Balochistan, Pakistan, 2010.

UNHCR/N. James



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have provided an important opportunity for helping displaced populations get back on their feet more quickly and increase resilience to future shocks. Yet in both countries the early recovery phase of the response was separated from the emergency response phase, and funding for, and implementation of, early recovery programmes proved challenging. In Colombia, the slow pace of construction of shelters was of particular concern. Many families who lost homes were displaced three or four times while they awaited completion of transitional housing. Finally, failure of the governments to adequately address the risk of recurrent displacement by allowing people to return to flood-prone areas increased vulnerabilities and eroded resilience. In Pakistan, flooding the following year displaced many of the same people a second time.



In both countries, IDPs who did not return voluntarily ultimately were forced to do so as a result of government policies requiring that camps and shelters be closed after a certain period of time following the disaster, even for those who had nowhere to go, often resulting in secondary displacement.

In Colombia, the floods disproportionately affected those who had been previously displaced by the country's decades-long armed conflict. Yet because Colombia has separate government institutions for responding to people displaced by conflict and people displaced by natural disasters, and because Colombia's IDP law does not extend to

people displaced by natural disasters, none of the procedures, rights and protections Colombia has developed for providing emergency relief in the case of conflict-related mass displacements was triggered by the floods. Rather, an entirely different set of government institutions and procedures came into play, which proved far less effective.

In contrast, Pakistan places authority for responding to conflict- and natural disaster-induced displacement within the same institutions – the NDMA at the national level and PDMA at the provincial level. This institutional capacity was evident in the response to the floods in Khyber Pakhtunkhwa, where the PDMA's experience in responding to ongoing, conflict-related humanitarian emergencies, and in working in cooperation with the international community, allowed for a far more coordinated and effective response when the floods hit.

In countries affected by both conflict and natural disasters, it is preferable to place responsibility for responding to both man-made and natural disasters within the same ministry or institution, thereby building capacity, promoting accountability, and maximising allocation of resources.

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This article draws upon Refugees International's research and observations in Pakistan and Colombia in 2010 and 2011.<sup>2</sup>

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## Health crises and migration

Michael Edelstein, David Heymann and Khalid Koser

**Individual and collective responses to health crises contribute to an orderly public health response that most times precludes the need for large-scale displacements. Restricting population movement is a largely ineffective way of containing disease, yet governments sometimes resort to it where health crises emerge.**

Among the earliest recorded government health policies were the quarantine laws during the plague epidemics of fourteenth-century Europe when several Mediterranean port cities isolated communities affected by disease and restricted population movement in response to the threat of a health crisis. By the late eighteenth century these principles had become the norm at international borders.

In 1951, the World Health Organization (WHO) adopted the International Sanitary Regulations – renamed International Health Regulations (IHR) in 1969 – with the objective of maximum prevention of the spread of infectious diseases with minimal disruption of travel and trade. The IHR focused on controlling four diseases – cholera, yellow fever, plague and smallpox – and were based on the assumptions that only a few diseases were a threat to international travel and trade, that migration was unidirectional, and that diseases could be stopped at international borders.

The IHR contain no formal enforcement mechanism or penalty for failing to comply with recommendations and in 1995 WHO conceded that countries did not often report these four diseases because of the risk of decreased travel and trade. Furthermore the IHR did not cover diseases causing high mortality or spreading rapidly, such as pandemic influenza. The 2003 Severe Acute Respiratory Syndrome (SARS) outbreak and the 2009 H1N1 outbreak have shown that diseases can spread globally within days.

Revised IHR have therefore been in operation since 2007. They have moved away from specific diseases and now focus

on ‘public health events of international concern’ (PHEICs). The revised IHR take a preventive approach to the international spread of disease, emphasising national responsibility for the detection and containment of disease events at source through the requirement that they develop and maintain core public health capacity. The IHR require the reporting of PHEICs to WHO so that appropriate evidence-based international measures can be developed.

Despite their adherence to the IHR, countries sometimes revert to isolation and restriction, threatening or deciding to close borders or to impose travel restrictions in an attempt to prevent infections from entering their territory. As a response to the SARS epidemic in 2003, for example, Kazakhstan closed its 1,700km border with China to all air, rail and road traffic and Russia closed the majority of its border crossings with China and Mongolia. During the H1N1 pandemic in 2009, China suspended direct flights from Mexico and screened every inbound international flight, quarantining the whole flight if any passenger was found to have a temperature above 37.5 degrees Celsius. All these measures were taken against WHO’s advice.

### Flight in response to health crises

Large-scale population movement as a direct result of a health crisis is rare. When it does occur, migration tends to be internal (to regions directly outside the immediate crisis zone), temporary, and early on in the health crisis when information is often scarce, contradictory or inaccurate. A plague outbreak in Surat in India in 1995 led to half a million people fleeing the city. During the 2003 SARS outbreak up to one million people

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left Beijing. In these two examples people tended to go back to their family villages and return to the city after the crisis had subsided.

Cross-border migration as a result of a health crisis is rarer but does occur. In 2008-09, Zimbabwe endured one of the largest outbreaks of cholera ever recorded, with more than 98,000 suspected cases and 4,276 deaths. By January 2009, before the outbreak had reached its peak, an estimated 38,000 Zimbabweans had fled into South Africa, although the precise impact of the cholera outbreak on migration from Zimbabwe into South Africa is hard to estimate due to a high level of background migration of thousands of Zimbabweans crossing every day.

One specificity of health crises is the ability of individuals and communities to mitigate the effect of the crisis. The gradual improvement of the understanding of infectious diseases, their causative agents, modes of transmission and evidence-based ways to control their spread have empowered individuals, populations and governments to adopt preventive behaviour, in many cases pre-empting voluntary or forced migration. Individual or collective actions reduce the risk of disease and offer an alternative to fleeing, which may explain in part why people choose not to leave an area where a health crisis is occurring. During the 2003 SARS outbreak, the city of Toronto in Canada, which experienced the largest outbreak of SARS outside Asia, adopted a voluntary and widely followed 10-day home quarantine strategy for individuals who had been in close contact with a case. In total, 23,103 individuals were quarantined, of whom only 27 were issued a legally enforceable quarantine order. During the 2009 H1N1 pandemic, WHO recommended vaccine development and distribution, use of antiviral medications, school closures, work pattern adjustment, self-isolation of symptomatic individuals and advice to their caregivers, and cancellation of mass gathering as ways to mitigate the pandemic. WHO explicitly stated that it did not recommend travel restrictions.

## Conclusions

It is difficult to attribute collective migration directly to health crises, especially migration across international borders. In cases where population migration occurs, it is generally within a wider humanitarian crisis which is often already an immediate threat to life and is more likely to be the trigger of the population movement. Even when the underlying event is not sudden or catastrophic, such as the gradual collapse of the state in Zimbabwe, migration due to health crises occurs against a background of pre-existing emigration to bordering countries, with populations displaced by the health crisis using the same mode of movement as those migrating for other purposes. This makes it difficult to attribute migration directly to health or to quantify the health-related population movements. Where people move as a result of health crises, they tend to move internally and over short distances for relatively short periods of time, and often because of misunderstandings and panic.

Although the individual and collective use of measures to mitigate the effect of health crises may partly explain why health crises do not lead to migration, such responses may not yet be possible in resource- and infrastructure-poor countries where the majority of health crises occur.

The current understanding of the dynamics of disease transmission is that diseases cannot be stopped at borders. Outbreaks such as those of SARS or H1N1 have shown that the volume and speed of global travel mean that diseases can be disseminated worldwide in a matter of days. Mathematical models provide little evidence that travel restrictions would reduce the spread of disease. This evidence is reflected in the IHR, which focus less on control measures at borders and more on detection and response at source, and on enabling global communication channels. The regulations allow for a tailored, evidence-based response to be advocated as and when crises arise, focusing on limiting the spread of diseases.

While the IHR encompass travel-related public health measures to limit the spread of disease, such as vector-control measures at points of entry by air, sea or land, they are not designed to make recommendations on migration-related issues relating to health crises, such as the status of individuals or populations leaving a health crisis area. Individuals crossing international borders purely to escape a health crisis are unlikely to be recognised as refugees under the 1951 Convention; they are more likely to be considered migrants.

While there are legal precedents for successful health-related asylum claims, particularly for HIV-positive individuals, asylum was granted on the basis of the fear of persecution associated with HIV status or sexual orientation rather than health status. The reverse – i.e. individuals qualifying as refugees who are denied asylum and deported because of their HIV status – has been more commonly seen. UNAIDS have stated that HIV-related migration restrictions have regularly violated the human rights principle of *non-refoulement* of refugees. These cases fall outside the remit of the IHR.

The flexibility extended in much national legislation to people who may not satisfy the legal criteria for refugee status but who may be in danger if they return to their country of origin could be extended to people from countries undergoing health crises. Similar provisions already exist, for example, for people whose countries have been affected by natural disasters (such as US policy towards Montserrat and Haiti). As there is often an interaction between natural disasters and health consequences, such an understanding should be relatively easy to achieve. The policy challenge would be to know when deportation bans on the basis of health crises may be lifted, and it would seem sensible that these would be aligned with WHO declarations under the IHR.

In a world of rapid travel, trade and climate change, where the frequency of emerging infectious diseases and other health problems is on the rise, the potential for increased

health-related migration makes it a necessity to better define its status. Greater efforts should be made to encourage governments, and organisations that work with migration and migrating populations, to understand and abide by the IHR as a means of strengthening the potential to prevent migration related to health crises while ensuring the best possible protection against disease.

### Recommendations

- More research is required on the impact of health crises on migration particularly in distinguishing health from other motivations to migrate.
- Greater coherence is required between the IHR and migration policies and practices at the national and international levels in order to inform government responses that help populations avoid migration during health crises.
- At the national level, greater coordination is required between government agencies separately tasked with migration and health mandates; national migration policies should accommodate the assistance and protection of migrants arriving from, or faced with the prospect of returning to, areas affected by health crises, including by suspending deportation orders until the health crisis has subsided.

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## Questioning 'drought displacement': environment, politics and migration in Somalia

Anna Lindley

**The role of the recent drought in producing migration cannot be understood in isolation from human practices and past and concurrent political processes. The environmental dimensions of recent displacement prompt a series of policy challenges in relation to prevention, response and rights protection.**

In 2011, a severe drought combined with intense political violence and general governance failure caused widespread hardship in south-central Somalia, with famine declared in parts of the territory. This crisis generated – and was exacerbated by – high levels of forced displacement, with around a quarter of the population displaced within the Somali territories and abroad in 2011.

Prominent in the political and media hype which ensued were references to 'drought displacement' as distinct from movements prompted by conflict and persecution but there are problems with this interpretation, both empirically and in terms of the policy responses it tends to support. In this case, severe structural violence and years of ongoing armed conflict strongly shaped the experience of drought by different groups in society, and whether they were forced to migrate or not.

### **Environmental conditions, rural livelihoods and mobility**

The Somali territories have an arid and semi-arid environment, and frequent episodes of drought, when rainfall is low for a prolonged period, are a major problem. Prevailing ecological conditions are critical to the rural activities – livestock rearing and crop production – which are a key component of the livelihoods of the majority of Somalis.<sup>1</sup> These livelihood systems are not static but crucially mediated by political dynamics and other human factors.

More than half the population are either pastoralists or agropastoralists, deriving

food and income from rearing livestock. Mobility is at the centre of their livelihood system; pastoralism is a nomadic or semi-nomadic activity, involving the seasonal concentration and dispersal of herders and their livestock according to the availability of forage and water in different places.

Most nomadic pastoralists have some urban-based kin, and some of the family may settle on the edge of town for part of the year, or move to urban areas on a temporary or more permanent basis to work or for schooling. These movements give rise to important flows and exchanges of basic supplies, cash, business transactions, and mutual hospitality and assistance. International migration of some family members often provides an additional dimension, and an important source of cash remittances.

But drought is a major challenge for pastoralists. When adequate pasture and water are hard to access, one coping strategy is moving longer distances in search of water and pasture, sometimes even across international borders. This may be seen as displacement in the sense that the pastoralists' usual migratory pattern has been disturbed. Key tools in this process are on the one hand traditional provisions within customary law which oblige Somalis to allow access to other groups at times of drought and on the other the modern mobile phone which helps pastoralists seek information about water availability in other locations.

The vital interconnections between environmental conditions and political context are illustrated by the Somali proverb *nabad iyo*



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in people's relationship with their natural resource environment was far from benign. Nonetheless, since the collapse of the state in 1991, violent and predatory political actors have exacerbated the impact of environmental hazards on particular groups, and existing governance frameworks often lack the capacity and will to regulate environmentally damaging practices,

*caano* (peace and milk), stressing the strong positive association for pastoralists between security and prosperity, with access to pasture and water relying on peaceful cooperation. The complementary proverb *col iyo abaar* (conflict and drought) highlights negative synergies which threaten access to pasture and water. Drought may lead to pressures on resources and spark violent conflict, or conflict and insecurity may exacerbate environmental problems and the experience of drought.

After the collapse of the state in 1991, challenges emerged or worsened in the absence of state institutions. However, free from state interference, in many ways pastoralism thrived, despite the tough ecological conditions and the political violence. By contrast, crop production is more closely dependent on local conditions, and has been more vulnerable to environmental hazards and conflict conditions in recent decades, with civil war politics undermining access to effective water irrigation systems. For farming and agro-pastoral communities alike, migration is among the key responses to these risks.

While both routine mobility and displacement in the wake of natural hazards have been recurring features in rural Somali livelihoods, these dynamics cannot be understood without reference to the political context in which they occur. Before the civil war, state intervention

or to respond adequately to changing vulnerabilities in the population.

#### **A multi-faceted, multi-layered crisis**

The humanitarian crisis which peaked in 2011 has often been described as the result of a 'perfect storm' of concurrent conflict, drought and poor governance. Following years of much more localised, lower-intensity conflict, and pockets of peace in south-central Somalia, in 2006 the political conflict entered a new and intense phase, with the rise of the Islamic Courts Union and the hostile international response, reflecting the context of the global 'war on terror' and regional fears of Somali irredentism. After the Transitional Federal Government and Ethiopian troops ousted the ICU, locals in Mogadishu in particular witnessed high levels of combat-generated insecurity, disregard for civilian life and a weakening of clan-based protection mechanisms. The conflict also had direct economic consequences, disrupting livelihoods through the wholesale destruction, confiscation or occupation of homes, property and businesses; key infrastructure such as roads or markets damaged or blocked; and mobility heavily circumscribed by violence. Numbers of internally displaced persons (IDPs) escalated from 400,000 in 2006 to one million in 2007.

It was against this background of conflict that drought emerged in 2010, coming in



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some areas on top of several consecutive seasons of poor rains. The impact on rural livelihoods was severe. Cereal prices reached record highs and pastoralists struggled to find water and pasture, leading to high levels of animal mortality and low sale prices due to the deteriorated condition of livestock reaching market and over-supply, and to localised conflict between pastoralists. The situation was compounded by the restriction of the usual risk-spreading and coping strategies used by rural people; due to the widespread nature of the hardship, casual labour opportunities were in short supply, wages contracted, and family and community support mechanisms were eroded. As a result (echoing the famine displacement of 1991-92) rural people migrated in large numbers towards urban centres, particularly Mogadishu, in the hope of accessing humanitarian assistance.

Thus an environmental emergency overlapped with an extant political conflict. Available domestic and international governance mechanisms failed to check the situation. The situation in Somalia was thrown into sharp relief by more coordinated policy responses to the regional drought in Kenya and Ethiopia, underlining that natural hazards like drought do not automatically lead to human disasters like famine; questions of governance, accountability and entitlements are key. In Somalia, domestic political actors on all sides failed to address the significant vulnerabilities in the populations under their control, and indeed the way they pursued the conflict often exacerbated the situation for civilians.

As a result of the way this crisis unfolded, a combination of factors was evident in most people's decisions to leave their places of residence. While for some there was a clear primary driver, for many people things were more blurred. As one refugee from Mogadishu said, "I cannot say in one story why I wasn't safe; there are too many stories".<sup>2</sup> Many people might have been able to weather drought using normal coping strategies without becoming displaced were it not for the contracting labour

opportunities, restricted mobility and uneven distribution of humanitarian aid which resulted from the political conflict. Others would have been able to weather conflict better were it not for the drought.

Beyond this simultaneous combination of factors, there is also the culmination of factors over time: the underlying structural factors and the personal histories that shape migration. For example, for some people drought and hunger were the immediate drivers of movement but the groundwork had been laid by years of conflict, marginalisation and abuse. For some, an upsurge in violence was the straw that broke the camel's back, against a background of long-term strains on rural livelihoods which already predisposed them to migrate. In this context, a useful analytical distinction may be made between structural factors, proximate causes, immediate triggers and intervening factors.<sup>3</sup> We often focus on proximate causes and immediate triggers but less on the structural factors and processes of deprivation, vulnerability and disempowerment that underlie displacement.

This nuanced view of causation stands in sharp contrast to the frequent references to 'drought displacement' by politicians and the media in the context of the 2011 humanitarian crisis. While host-country governments like Kenya have been particularly keen to use such terminology, it has also featured in the announcements of international humanitarian organisations. However, the multi-faceted and multi-layered nature of the humanitarian crisis as outlined above suggests that the large displacements in 2011 clearly cannot be viewed as purely 'environmentally induced'.

It is true that the 'drought displacement' terminology sometimes fits with survey evidence. For example, in the Food Security and Nutrition Analysis Unit's 2011 sample of IDPs in south-central Somalia, 60% said that they were displaced by the drought while in a 2012 survey of recent arrivals in Kenya, 43% of respondents said that they had come to the camps for drought, livelihood or

family reasons, not making reference to any additional conflict- or persecution-related reasons for leaving. However, such surveys tend to capture immediate triggers but tell us little about the structural context of people's migration. The 'drought displacement' label greatly over-simplifies the nature of Somali mobility in 2011 and we need to be wary about the political functions that this serves.

Contrary to the received wisdom that climate-related movements are short-distance and temporary, the 2010-11 drought was associated with high levels of regional movement because of the ongoing insecurity and the difficulty of accessing humanitarian assistance inside the country. In the context of regionalised drought, people migrating from inside Somalia found themselves crossing borders into areas that were also under considerable environmental stress. The largest numbers went to Kenya where the government took pains to distinguish in public statements between long-term refugees displaced by conflict and people more recently displaced by drought – implicitly circumscribing its responsibilities under international law.

### Policy responses

Responses to movement in humanitarian crises often focus on already displaced populations but it is equally if not more important to address what forces people to move. This requires working across what are often viewed as discrete policy fields and specialisms, bringing together elements of climate change adaptation, humanitarian relief, livelihoods development, post-conflict recovery, and human rights protection. Recent analysis suggests that when early warnings of disaster are triggered, these need to be geared more towards the information needs of domestic actors, and there is a need to clarify the rights, resources and responsibilities of international humanitarian actors to secure a stronger compact against famine.

Many NGO and community interventions aim to mitigate the impact of drought by increasing people's resilience. However, this is not just a technical challenge but a

deeply political and rights-based one as the most vulnerable people have been on the receiving end of systematic violence and marginalisation for more than two decades – and are deeply vulnerable to any kind of shock, including drought. Routine and emergency coping mobility, including across borders, has long been a major source of resilience but militarised frontlines and closed borders have threatened this, and future policy should be sensitive to the value of mobility in sustaining rural livelihoods.

When drought is allowed to unfold into a severe crisis, the humanitarian effort is hampered by the acute politicisation of aid and the corrupt political economy surrounding it. But these problems highlight not so much a need to depoliticise humanitarian aid as a need for humanitarian agencies to redouble efforts to address the needs of the most vulnerable civilians – an inherently political act – while distancing themselves from particular state-building projects.

Finally, there is the classic challenge of moving from relief to recovery, in the absence of durable political stabilisation.

### Protecting the rights of displaced people

The role of Somali socio-cultural resources, including kinship, religion and diaspora support, have been increasingly prominent in the context of the international aid paralysis, and where possible international actors should work in harmony with these indigenous sociocultural protective capacities. However, the role of macro-political authorities is absolutely vital for protecting all Somalis on their territory.

In the major refugee-hosting country, Kenya, as elsewhere, there are concerns about the shrinking of asylum space in response to the latest humanitarian crisis in Somalia. It is extremely unlikely that all refugees can or will return to Somalia and organisations trying to protect refugees should continue to push for gradual pathways to more positive participation in society, ensure that their

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presence is taken into account in urban and rural development planning, and support their mobility as key for livelihoods.

Although there is a common assumption that the 'drought-displaced' find it easy to return once the rains fall, the fear and impoverishment among many displaced Somali people and the ongoing political uncertainty in their home areas suggest otherwise. Despite improved rainfall, by June 2012 only 14% of refugees surveyed in Dadaab said they would consider returning, and by mid-2013 returns were still limited, despite the increased pressure on refugees in Kenya. In light of these pressures, international and domestic actors must emphasise the need to uphold the principle of voluntary return. This further highlights the critical role of broader political processes in addressing displacement. Any return movements of refugees and IDPs will need to connect with long-term efforts towards rehabilitation and building rural resilience if they are to be sustainable in the long run.

It is abundantly clear that drought poses a major and recurring challenge to the livelihoods of many people across the Horn of Africa. However, Somali mobility in 2011 cannot be boiled down to the simple epithet of 'drought displacement'. Such reductive terminology misrepresents the drivers of displacement and hides how drought interlocks with political processes, both historical and concurrent. Although thinking across policy silos can be professionally and politically uncomfortable, problems arise with a single-sector approach to policymaking in contexts of humanitarian crisis.

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## Non-citizens caught up in situations of conflict, violence and disaster

Khalid Koser

**When non-citizens are caught up in humanitarian crises, they can be as vulnerable to displacement, and suffer its consequences as acutely, as citizens. Yet frameworks and capacities for assisting and protecting them are lacking.**

In recent years, millions of non-citizens have been displaced in countries where they reside and work. Examples include those affected by invasion in Lebanon in 2006, xenophobic violence in South Africa in 2008, revolution in Libya in 2011, civil war in Côte d'Ivoire in 2010-11, flooding in Thailand in 2011, and the current conflict in Syria.

They have been affected as bystanders or deliberately targeted. Non-citizens may not speak the local language or understand the culture, they may lack job security and they may have no local social safety net. Equally,

it may be harder for displaced non-citizens to resolve their displacement, especially if they are unable or unwilling to return to their country of origin, and if they face specific challenges in regaining property, identification documents and employment in the countries from which they have now been displaced.

The displacement of non-citizens is likely to become more common in the future. For example, the expansion of Chinese interests in sub-Saharan Africa is already resulting in large numbers of migrants working in unstable states. Climate change may make

many of the developing states where more migrants are moving for work susceptible to an increasing frequency of natural disasters. This combines with targeted violence against immigrants as a result of rising xenophobia in many countries around the world at the moment. As poor and developing countries continue to export migrant workers, the burden of providing assistance and protection during times of crisis is likely to continue to fall significantly on the international community, as such sending countries may lack the capacity to protect their own citizens overseas effectively.

Yet as in other examples of crisis migration, in many cases non-citizens who become displaced fall into protection gaps, and as a result responses have been ad hoc and incomplete. As the likelihood for migrants to be caught up in crises increases, a more comprehensive and predictable response is required.

#### Lessons and recommendations

More research, including better data collection, is required to establish the extent to which non-citizens face particular vulnerabilities at all stages of displacement and evaluations are needed of the humanitarian response to the displacement of non-citizens.

#### The rights of non-citizens during displacement are not explicitly enumerated:

The rights of non-citizens affected and displaced by crises are implicit in human rights law and international humanitarian law but nowhere are they explicitly stated. Instruments that cover displacement do not deal with non-citizens, while those that cover non-citizens do not deal with displacement. It may be argued that the Guiding Principles on Internal Displacement apply to non-citizens leaving homes or places of habitual residence but this probably does not include short-term or temporary migrant workers, and neither is it clear whether the Guiding Principles apply to irregular migrants. Equally, neither of the two International Labour Organization instruments relating to migrant workers nor the UN International

Convention on the Protection of the Rights of All Migrant Workers and their Families mention migrants in crisis and they do not contain provisions for their displacement.

The rights of non-citizens during displacement are nowhere enumerated, and neither are responsibilities for protecting their rights. One implication is that, on the whole, international organisations have assisted non-citizens alongside other displaced persons without discerning where non-citizens may have particular needs.

Where standards on displacement are being developed or updated they should make explicit reference to the rights of displaced non-citizens and responsible parties. The Nansen Principles are a case in point, as is the current work of the International Law Commission (2012) on standards on the 'expulsion of aliens' and the 'protection of persons in the event of disasters'.

#### Responsibilities for protecting and assisting non-citizens during crisis are not clearly ascribed:

It is not clear from existing provisions who is responsible for protecting and assisting non-citizens during crises. Reflecting human rights law and international humanitarian law, the Guiding Principles clearly assign primary responsibility to the state where the displacement takes place. Yet governments of the country of origin also have a legal, as well as civil and moral, responsibility to protect their own citizens, as stipulated in the Vienna Convention on Consular Relations. No UN agency has a mandate to protect or assist IDPs, whether or not they are citizens of the country where they are displaced. The International Organization for Migration (IOM) is the world's leading migration agency but it does not have a protection mandate, although it has recently developed a Migration Crisis Operational Framework intended to provide a migration lens on crises and which should provide a platform for greater international cooperation.<sup>1</sup>

There may be a case to refer the issue of displaced non-citizens to the UN Special

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Rapporteur on the human rights of migrants and the UN Special Rapporteur on the human rights of internally displaced persons.

### Asylum seekers and refugees require special attention:

The vulnerabilities of displaced non-citizens are heightened for asylum seekers, refugees and stateless persons, whose rights as enshrined under international law may be

hard to guarantee during crises. In the case of Lebanon, invasion affected an existing refugee population of some 400,000 Palestine refugees, who were already particularly vulnerable. In South Africa non-citizens were displaced specifically because they were targeted on the basis of their nationality, leading to asylum claims. In Libya there were 3,500 asylum seekers and 8,000 refugees registered by UNHCR before the uprising. UNHCR has reported that 360,000 Palestinians as well as 94,000 Iraqi and other refugees need immediate humanitarian support in Syria.

### Countries of origin have varying capabilities to assist in times of crisis:

Not all countries have the capability to assist their citizens when they are affected by humanitarian crises while abroad. In the cases of Myanmar and Zimbabwe, the political will to assist citizens displaced in Thailand and South Africa respectively was largely absent; indeed, some Zimbabwean migrant workers applied for asylum upon being displaced. In other cases poorer countries have simply lacked the capacity to assist; an international emergency fund should be considered, for access by countries of origin to fund the evacuation of their citizens during crises.

### Coordination among international agencies is unpredictable:

A coordinating mechanism



Tunisian border officials hold back the crowd at the Tunisia-Libya border in March 2011, where thousands of people anxious to leave Libya – principally migrant workers from Tunisia and Egypt – gathered in no-man's land.

should be established to ensure effective cooperation between relevant international agencies to assist and protect non-citizens displaced internally and across borders during crisis situations. Coordination between IOM and UNHCR during the Libyan crisis was a particular success but such coordination has certainly not been systematic, and it is neither predictable nor can it be guaranteed in future crises. Contingency planning should take place at a bilateral and regional level to ensure effective cooperation between states during evacuations of non-citizens from crisis situations.

### National responses are often inadequate:

One of the consequences of the fact that the rights of non-citizens during crises are not explicitly stated in international laws, conventions or relevant standards is that national laws and policies that often draw on international guidelines are equally mute on the rights of non-citizens during crises. Furthermore, many affected states lack the basic capacity to implement existing laws and policies during periods of crisis. The key findings of an evaluation of the humanitarian response to the displacement in South Africa in 2008 were that there was a lack of experience and of established systems; lack of government leadership especially in the early phases of the crisis;

fragmentation of civil society; and confusion regarding the rights of displaced foreigners.<sup>2</sup>

Greater national capacity is required to protect and assist internally displaced persons – including non-citizens – during crises, ranging from establishing a response framework to a clear allocation of responsibilities, and consultation with affected citizens and non-citizens. There is a need to share experiences among states of origin and host states that have responded to the displacement of non-citizens in recent years.

More states should be encouraged to develop national laws and policies on the rights of internally displaced persons, including non-citizens. Existing national laws and policies should be updated to make explicit reference to the rights of displaced non-citizens. In this regard it is likely that states will be most willing to extend rights to those in a regular situation. Countries with large overseas worker populations should develop standard operating procedures for the protection of migrant workers during

crises, including detailed information on *in situ* protection measures, relocation, evacuation and repatriation procedures.

**In addition:** Pre-departure training for migrant workers should include contingency planning for crisis situations and micro-insurance schemes should be considered to assist migrants cope with emergency situations. And consular capacity should be developed to protect migrant workers and corporations that employ significant numbers of overseas nationals should develop standard operation procedures on protecting and evacuating workers, and establish risk assessment units and senior security officer positions.

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[www.brookings.edu/about/projects/idp](http://www.brookings.edu/about/projects/idp)

1. [www.iom.int/cms/mcof](http://www.iom.int/cms/mcof)

2. <http://tinyurl.com/Sa-violence-against-foreigners>

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## Humanitarian border management

Maximilian Pottler

Humanitarian border management is one of the tools that can supplement the humanitarian response for migrants caught in a crisis situation

Not all patterns of mobility during crises and not all people on the move during crises are comprehensively covered by current frameworks at the international, regional and national levels. The International Organization for Migration (IOM) recognises the need for improved coordination and capacities and has therefore developed a Migration Crisis Operational Framework (MCOF); this focuses on the vulnerabilities of a variety of people on the move and affected communities, whose needs and specific vulnerabilities can be overlooked in crisis response.<sup>1</sup>

The MCOF takes into account a number of migration management tools that can supplement the humanitarian response for migrants caught in a

crisis situation, among which is humanitarian border management. The police, immigration and border management agencies have key roles to play in the event of a migration crisis. When entire regions find themselves in turmoil, states facing political instability may primarily be concerned about security aspects of border management, closing affected borders as a measure to curb increasing cross-border mobility. States need to be equipped with alternative response mechanisms that recognise the crucial importance of upholding humane governance at borders in situations of increased pressure, in order to help protect vulnerable mobile populations in conformity with existing international law.

Building the capacities of border-managing agencies includes working on technical aspects such as sound contingency plans, early warning systems, search and rescue operations and mobile registration units,



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but also on developing an enhanced awareness of vulnerabilities among mixed-migration flows during crisis and referral systems for the protection of vulnerable individuals and groups. Institutionalised information exchange and joint operations have proven to benefit mobile populations as well as law-enforcement agencies. IOM intends to support states in building robust immigration and border management programmes supported by appropriate policies, laws, procedures and information systems to facilitate the movement of people which arises from a crisis. It has trained tens of thousands of immigration and border management officials around the world on topics such as human rights and refugee law, trafficking in persons and freedom of movement.

In late 2013 IOM's Tanzania-based African Capacity Building Centre carried out an assessment at the border regions between the DRC, South Sudan and Uganda. Based on that assessment a Training-of-Trainers for law enforcement officials in DRC

was carried out, encompassing an introduction to relevant international legal frameworks, techniques for interviewing vulnerable migrants, biometric registration of displaced populations, search and rescue, and elements of humanitarian response.

The utility and impact of humanitarian border management will depend largely on an active and innovative dialogue between all involved humanitarian actors on the one side and police, defence, immigration and border management services on the other to ensure that humanitarian principles and accepted international legal standards are increasingly applied by the security sector at times of migration crisis.

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1. Migration Crisis Operational Framework <http://tinyurl.com/IOM-MCOF>

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## Aspects of crisis migration in Algeria

Mohamed Saïb Musette

We face a new paradigm on migration issues after the so-called Arab Spring, the political, economic and societal crisis in the countries of the Middle East and North Africa. In response, security resolutions adopted by the EU to protect its borders address the countries of the northern shores of the Mediterranean, reflecting a focus on migration movements to the north, but the impacts are also felt in the countries of the southern shore, such as Algeria.

Since the Arab Spring, Algeria has become a haven for mixed migration flows from Tunisia, Libya, Egypt and Syria. In these flows, there are also refugees in search of a third country. Many analysts see in these flows only a transit route to the countries of Europe. This observation is only partially correct, because there are many who find shelter in Algeria.<sup>1</sup> In addition to the arrival of foreigners, we have also observed a movement of Algerian migrants, long established in those countries in crisis, to return to Algeria. These returnees, fleeing insecurity in their new home countries, may have lost all social ties within Algeria. Other Algerian migrants are known to be 'trapped' in some of these countries, regardless of their status there, regular or irregular.

Historically, Algeria has been known as a host country for refugees. Following every crisis due to natural disaster in the Sahara Desert, sub-Saharan Africans regularly move into southern Algeria. Since 1975, Algeria has been hosting Sahrawi refugees on its territory, and over many years there have been movements of refugees from the crises in Ivory Coast, the Democratic Republic of Congo and, most recently, Mali. There are at least 260,000 foreigners living in Algeria (0.7% of its population in 2012), more than 75% of whom are refugees, asylum seekers and other displaced people including migrants without status.<sup>2</sup> In the one department of Tamanrasset in the south, for example, there are around forty nationalities present.

The new context exposes migrants to difficult social conditions. Algeria, having previously adopted strict regulations regarding migration, has recently been more flexible in order to meet the basic requirements of people displaced by the political crises in North Africa. Nevertheless, Algerian territory is becoming a fortress. Despite the flexible rules of admission of foreign populations, there were 2,766 people expelled from Algeria by the border security forces in 2012. The authorities need to control 1,200 km

of Mediterranean coast – without assistance, as Frontex only assists the countries to the north – as well as 6,000 km of land borders. Having closed the land borders with Morocco in 1994, they have now been compelled to fortify the borders with Libya (December 2012), with Mali (January 2013) and Tunisia (August 2013), given the rising magnitude of cross-border trafficking and transnational crime<sup>3</sup> induced by crisis in this sub-region.

These movements are only partially covered by international instruments and while the Algerian

authorities certainly have opportunities to protect this stream of people, no agreements (bilateral or multilateral) are in force to do so.

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1. See *Mixed Migration Flows to, through and from Algeria*, published by International Centre for Migration Policy Development,

2. Compilation of data by the author. See also <http://esa.un.org/unmigration/migrantstocks2013.htm?msdo>.

3. Algerian Ministry of Defence Criminal Investigation [www.mdn.dz/site\\_cgn/index.php?L=an&P=dsi](http://www.mdn.dz/site_cgn/index.php?L=an&P=dsi)

## Forcing migration of globalised citizens

Oscar A Gómez

Today's constant flows of persons and information across frontiers mean that, when an emergency occurs, the international community feels it has to get involved not only out of solidarity but because its citizens could be in danger. Yet while the idea that states must take care of their citizens appears an obvious imperative, could their actions cause more harm than good? Crises – which do not distinguish between nationalities – tend to trigger special relief actions by foreign states for their nationals overseas; however, not only is it unclear whether foreign states are capable of delivering what they intend or are requested to do but also being a migrant is not necessarily a vulnerability factor, nor are migrants usually the most endangered population.

In March 2011 Sendai City in Japan faced a triple crisis – earthquake, tsunami and radiation threat. As it is not a major tourist centre or international commercial hub, there are few diplomatic missions in the city. At least nineteen consular teams visited from Tokyo, apparently to assess the needs of their compatriots; since the city was not as heavily affected as the coastal areas, the assessments were not the actual reason for the multiple evacuation operations which took place in the city between 13<sup>th</sup> and 20<sup>th</sup> March, totalling several thousand persons (mostly foreigners – naturalised citizens and Japanese spouses in some cases were evacuated, in others refused).

The first official evacuation was followed by a wave of displacement, both official and unofficial, of individuals and groups, movements which were covered – significantly – by local and international

media. Among the unintended consequences of official evacuations was panic flight when the consular teams offered the opportunity to leave the city. Secondly, there were reported cases in which people were coerced to leave because their government was telling them – as 'foreigners' – to do so; 'foreigner' is too broad a category to merit undifferentiated action.

Finally, evacuations by consular teams distort in many different ways the established protocols of humanitarian action. Foreign operations do not help the most endangered people, not even among their compatriots, and put pressure on scarce resources. The emphasis on foreign nationals during crises is mostly oriented towards dealing with public opinion and logistics back in their home countries, not about the actual security of persons at the area in trouble.

There are no simple solutions to this particular form of voluntarily forced migration. One important root of the problem can be found in the over-stretched idea of the state's responsibility and how little attention the idea of 'belonging' has received, that is, the possibility of considering oneself a member of the local polity, if not the national one, entitled to protection in times of crisis like anybody else. In the context of a globalised world, we should acknowledge that the scale of human mobility is making conventional responses to crises sometimes inappropriate.

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## The challenge of mixed migration by sea

Judith Kumin

**While ‘boat people’ are often fleeing a situation of crisis, they share their mode of travel with many types of migrants. Much more needs to be done to respond to irregular maritime migration in a way which protects fundamental rights and respects human dignity but the political will for this appears to be lacking.**

Contemporary irregular migration is mostly ‘mixed’, meaning that it consists of flows of people who are on the move for different reasons but who share the same routes, modes of travel and vessels. They cross land and sea borders without authorisation, frequently with the help of people smugglers. IOM and UNHCR point out that mixed flows can include refugees, asylum seekers and others with specific needs, such as trafficked persons, stateless persons and unaccompanied or separated children, as well as other irregular migrants. The groups are not mutually exclusive, however, as people often have more than one reason for leaving home. Also, the term ‘other irregular migrants’ fails to capture the extent to which mixed flows include people who have left home because they were directly affected or threatened by a humanitarian crisis – including one resulting from climate change – and need some type of protection, even if they do not qualify as refugees.

Mixed migration is not a new phenomenon. What has changed is its scope and complexity, and the way countries of destination react to it. The proliferation of causes, the involvement of criminal enterprises, security concerns and the sheer number of people on the move have led states to intensify their efforts to fight irregular migration, often applying blanket measures without any screening for protection needs. Where screening does take place, it generally serves only to identify refugees, carrying the risk of delegitimising those who do not qualify as refugees, and having a negative impact on how such persons are treated.

Although governments are wary of accepting additional protection obligations beyond

those pertaining to refugees, organisations working in the field of asylum and migration have started to look more closely at the profile of migrants and at their protection needs, including those which arise in the course of the journey as well as those resulting from conditions in the migrants’ countries of origin.

### The particular challenge of boat migration

Boat people, like other migrants, are driven by a variety of push factors: from economic deprivation to political repression, from civil war to the chaotic aftermath of revolutionary change, from sudden-onset natural disaster to the slower effects of climate change.

States increasingly see the ‘high seas’ as an area to which they can extend their border control measures, and are tempted by a variety of extraterritorial actions to prevent unauthorised arrivals. Some states argue that their international legal responsibilities do not apply when they act outside their territory or territorial waters, essentially creating a zone where the rights of migrants are not protected – and where it is difficult to monitor the actions of states.

As governments have intensified their efforts to combat irregular migration, people smugglers and migrants have resorted to ever more dangerous routes and means of transport. The result is situations bearing little resemblance to what the architects of the international law of the sea had in mind when they codified the duty to render assistance to persons in distress at sea.<sup>1</sup>

The duty to render assistance is a basic tenet of seafaring. Traditionally it was assumed that persons rescued at sea would be fishermen or other seafarers who could be deposited

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at the next port of call, from where they would return to their home countries. But disagreements about disembarkation of Vietnamese boat people emerged in the 1970s and 1980s, generating considerable regional and international tension, and foreshadowing problems in the Mediterranean region and elsewhere decades later.

By its very nature, the rescue of migrants at sea would seem to lend itself to international cooperation, since both rescuing and coastal states may find themselves with jurisdiction over migrants essentially by chance. The lack of political will to resolve questions concerning rescue and disembarkation, even within a regional context, is disturbing. The reluctance of states to make progress on these issues not only reflects their unwillingness to be saddled with responsibility for refugees, but is linked to the fact that migrant vessels frequently also carry individuals not in need of protection, or fleeing risks not covered by the refugee definition. Without agreement on how to respond to people on the move who cannot be returned to their countries of origin, whether for practical or protection-related reasons, states will continue to be wary.

### Interception and state responsibility

Interception at sea invariably results in lower levels of protection of fundamental rights than would have been available had the migrants been allowed to continue to their destination. From the perspective of states, however, it is an appealing instrument both because it prevents arrivals and because it takes place beyond public view. International law is not well developed with regard to interception. However, there is a broad consensus that states are bound by their international human rights obligations wherever they assert their jurisdiction, including outside their territory or territorial waters and indeed the European Court of Human Rights has asserted that states must take affirmative measures to ensure that intercepted migrants have access to protection.<sup>2</sup>

Even in the absence of empirical evidence that the possibility of being intercepted affects



Spanish coastguards off the island of Tenerife in the Canaries intercept a fishing boat carrying African migrants.

the 'tipping point' at which people decide to leave their country, states act on the basis of a belief that it is a valuable deterrent. For many years, the US has intercepted Cubans, Haitians, Dominicans and others in the Caribbean, and refused to allow intercepted persons, including those demonstrated to be refugees, to enter its territory. To avoid the obligations which would flow from the label 'refugee', it calls these persons 'protected migrants'. Australia, too, has gone to great lengths to avoid bringing intercepted persons to its territory where they would benefit from Australian legal protections. Both countries have taken intercepted persons to offshore facilities where conditions have been criticised as inadequate, and where independent monitoring has been very difficult.

States thwarted UNHCR efforts to issue Guidelines on interception, but the agency did issue a Protection Policy Paper on interception and extraterritorial processing,

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which sets out some standards for reception – based on international human rights law – applicable to all new arrivals, not only those who seek protection as refugees. Reception arrangements must address basic needs and be consistent with the right to an adequate standard of living; culturally appropriate meals, access to communication devices, space, privacy and security are required; detention must be used only if necessary, reasonable, proportionate and non-discriminatory. People with special needs (women, children, victims of torture and trauma) merit specific assistance.<sup>3</sup>

As the movement to define and secure the rights of persons who do not qualify as refugees but are fleeing other risks gathers steam, interception and offshore processing are likely to become even more attractive to states determined to limit their obligations.

### Conclusion

Boat migration is a complex phenomenon, involving the intersection of several bodies

of international law and thorny questions of jurisdiction. It affects countries of origin, of transit and of destination in all regions of the world. Despite its prevalence, states have so far failed to demonstrate the political will to work out an internationally accepted response which would both respect the sovereign right of states to control their borders and protect the human rights and human dignity of the boat people. Instead, states experiment with ad hoc responses, with the balance between protection and control shifting as a function of domestic and external factors.

Irregular migration by sea almost always represents a response to a crisis. It seems set to continue, as the drivers of migration multiply, other migration options are foreclosed and the steady intensification of migration control measures pushes migrants and people smugglers to take ever greater risks. Indeed, the very mode of travel frequently constitutes a humanitarian crisis, as evidenced by regular reports of tragedies at sea.

Inter-state agreements are needed in order to guarantee rescue at sea and safe disembarkation, as well as arrangements for reception and screening. States which practise interception at sea need to be held accountable for the protection of migrants' rights, and organisations should be wary of participating in or otherwise lending their imprimatur to ad hoc measures which undermine state responsibility. There is no doubt that the mixed nature of the flows creates a real challenge, with states and international organisations only in the early stages of discussions about how to identify and respond to protection needs beyond those of refugees.

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1. UN Convention on the Law of the Sea 1982, Article 98
2. *Hirsi Jamaa and Others v. Italy*, Application 27765/09, Council of Europe: European Court of Human Rights, 23 February 2012.
3. 'Maritime Interception Operations and the Processing of International Protection Claims: Legal Standards and Policy Considerations With Respect to Extraterritorial Processing', UNHCR Protection Policy Paper (2010).

## Populations 'trapped' at times of crisis

Richard Black and Michael Collyer

**A focus on those who are trapped challenges both theoretical and practical approaches to mobility and crisis, which prioritise movement. Those who have lost control of the decision to move away from potential danger have inevitably lost a lot more too.**

There are obvious humanitarian reasons to be concerned about situations in which individuals are unable to move to escape danger. Such immobility magnifies their vulnerability and may inhibit the access of humanitarian actors. There is also a growing weight of evidence that particular drivers, such as environmental change, may actually prevent rather than encourage movement.

To be 'trapped', individuals must not only lack the ability to move but also either want or need to move. The ability to migrate is clearly a complex and multifaceted indicator that includes a range of potentially relevant policies that may impede movement and access to significant resources.

A consideration of trapped populations must distinguish between ability, desire and need to move. The theoretical problem of distinguishing between not wanting and not being able to migrate and the possibility of involuntary immobility, that is, distinguishing those who wish to move (or need to do so in times of crisis) but remain *in situ* from those who do not wish to move, is likely to be extremely difficult, not least because people's judgement about whether it is necessary to move is likely to change over even quite short periods of time. A nuanced reframing of migration theory around the three concepts of migratory space, local assets and cumulative causation is undoubtedly a step forward in explaining the full range of mobility decisions.<sup>1</sup>

The justification for a concern with the immobile is that particularly vulnerable populations will be trapped. Yet the potentially extreme vulnerability of the involuntarily immobile justifies greater attention to this group anyway. It also

justifies some attempt to extrapolate existing information to gain some understanding of how those who are trapped might respond to progressively more severe crises or shocks and how these responses could be supported.

Conflict is one factor which may disrupt existing patterns of mobility and prevent further migration taking place. For example, it could be argued in relation to conflicts in the 1990s in Bosnia, Sri Lanka, Somalia and elsewhere that those in most humanitarian need were precisely those unable to flee from conflict and violence, rather than those who moved to become refugees or IDPs. Recognising this, international actors sought to establish 'safe havens' within these countries, where both *in situ* and internally displaced populations could benefit from UN protection and assistance, although in practice these zones did not always remain 'safe', as was illustrated most notoriously in the town of Srebrenica.

A consistent focus on movement "renders the involuntarily immobilised invisible". Lubkemann considers the situation in a drought-prone rural area of Mozambique during the civil war where a predominantly male group with established patterns of labour migration to neighbouring South Africa was able to benefit economically from forced migration, whereas members of the disproportionately female group left behind were prevented – by the intensification of violence – from engaging in their usual small-scale mobility in response to the prolonged drought of the early 1980s and so their impoverishment increased. Those who moved the least ultimately suffered most dramatically from the war's effects on migration precisely because their





Kosova Albanian refugees massed on the Kosovo-Macedonia border, May 1999. The refugees were held at the Blace border crossing for five days prior to being permitted entry into Macedonia. Photographer Howard Davies has documented the lives of refugees and asylum seekers for more than twenty years. More photographs from his extensive archive can be found at [www.eye-camera.com](http://www.eye-camera.com)

normal mobility strategies were profoundly disrupted through forced immobilisation.<sup>2</sup>

The immobilising effects of environmental change have also recently started to be observed. The 2011 Foresight report of the UK's Government Office for Science concluded that it was possible that migration might become less rather than more prevalent in the context of climate change.<sup>3</sup> In Bangladesh, it argues, "although mobility can serve as a post-disaster coping strategy, ... disasters in fact can reduce mobility by increasing labour needs at the origin or by removing the resources necessary to migrate." It has also been argued that "the greatest risks will be borne by those who are unable or unwilling to relocate, and may be exacerbated by maladaptive policies designed to prevent migration."<sup>4</sup>

The combination of multiple constraints on opportunities for mobility is likely to compound the impact of enforced immobility. This is just as true for the combined effects of environmental disasters and restrictive migration policy in Bangladesh as it is for conflict-related violence and drought in Mozambique: the greatest burden falls on those who are least able to cope.

### **Conceptualising trapped populations**

Those who are denied access to mobility entirely, whether through lack of various kinds of capital and/or through other constraints such as conflicts, hazards or policies, are likely to have a distinct set of vulnerabilities that are rarely acknowledged and hardly ever addressed.

Distinguishing between those who choose to stay and those who are forced to stay is essential if the notion of trapped populations is to have anything other than a very broad conceptual application. A basis for distinguishing involuntary immobility could be the need to move, based on some form of well-founded fear of the consequences if movement does not take place. The term 'trapped' highlights the issue of need to migrate.

Yet in a crisis situation, such as a political emergency or environmental disaster, an urgent intention to migrate cannot simply be conflated with need, since even where there is a clear humanitarian need to migrate some people will prefer to remain and even in extreme circumstances mobility results from a positive choice. Trapped populations are those people who not only aspire but also need to move for their own protection but who nevertheless lack the ability.

In the situation of environmental change, where migration can be seen as a form of adaptation to environmental change, low levels of capital indicate both high vulnerability to crises and low ability to move away. Different forms of capital may have a more direct influence on ability to move, such as financial capital or access to transportation, or a less direct influence, such as involvement in social networks beyond the area immediately affected by the crisis.

A striking example is New Orleans at the time of Hurricane Katrina. Those with resources left in advance of the approaching hurricane; those with friends and family elsewhere, with whom they could go and stay, were also more likely to leave. Those without resources (largely the poor, African-American, elderly or residents without private cars) remained, trapped as the floodwaters rose. The dangers of the crisis were disproportionately faced by the most vulnerable. Where mobility brings benefits, trapped populations are further marginalised.

If migration is a resource, policy that limits or controls that migration contributes to trapping populations, whether deliberately or incidentally. The function of migration policy in restricting mobility is now widely commented on, particularly in relation to detention and deportation. A progressive tightening of controls on international migration has become one of the most obvious limits to mobility. Indeed, the decline of international refugee protection, caused by the gradual closure

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of the territories of wealthier states, was a significant concern of the 1990s.

It is now well established that the dominant pattern of crisis migration involves temporary moves over short distances, and policy will therefore be most significant in trapping populations where it affects this type of movement. With the exception of populations immediately adjacent to borders, the enhanced controls on international migration are likely to have less impact than other, often non migration-related, policies.

### Being 'trapped' on the move

Protracted refugee situations offer another obvious example of a partially mobile yet trapped population. This is particularly the case in refugee or IDP camps where mobility out of the camp is officially restricted. Individuals exercised a degree of mobility to reach the camp and although this usually provides an immediate solution to short-term protection needs it also deprives individuals of possible access to resources which would allow them to move on, effectively trapping them in the camp.

Being trapped on the move may also result from a more individual migration project. For example it is now increasingly common for migrants from West Africa to have to stop in North Africa rather than reach Europe. The interruption of this type of movement increases vulnerabilities of migrants forced to wait for extended periods of time at particular nodes along the route, trapped at particular points along the journey, deprived of resources or blocked by migration controls and unable to return home.

### Conclusions

Politically acceptable humanitarian solutions are needed to the tremendous vulnerability faced by trapped migrants in certain contexts, such as Sudanese in the Sinai or Central Americans aspiring to migrate to the US in northern Mexico. In areas such as Morocco or South Africa, migrants themselves are organised and proactively campaigning for action.

Practical policy responses are not obvious, though there are existing points of engagement. The final Nansen Principle focuses on 'National and international policies and responses' which include planned relocation to be implemented "on the basis of non-discrimination, consent, empowerment, participation and partnerships with those directly affected ... without neglecting those who may choose to remain."<sup>5</sup> Choosing to remain is obviously substantially different from being unable to move.

Former UN High Commissioner for Refugees Sadako Ogata's declaration of a 'right to remain' for crisis-affected populations in 1993, which was initially criticised as an implicit attempt to limit mobility and restrict the right to seek asylum, inspired a policy of 'preventative protection' by the UN in the 1990s. In this context, although well intentioned and seemingly to protect those who were trapped, this policy could be seen as punitive for those trapped not simply by 'events' but as a direct or indirect consequence of policy itself.<sup>6</sup>

As long as we have limited information on trapped populations, the policy goal should be to avoid situations in which people are unable to move when they want to, not to promote policy that encourages them to move when they may not want to, and up-to-date information allowing them to make an informed choice. While it is difficult to imagine exact details of such policies, it does seem clear that they must not be restricted to national-level initiatives. Regional initiatives, such as the Kampala Convention, must be combined with city-level initiatives as part of the solution. Policies focused on enabling mobility and providing timely access to relevant information can be more easily targeted at the local level.

The problem is not people being in the wrong place in relation to climate change or other crises. The problem is people being in the wrong place and being unable to do anything about it. The most urgent issue is to identify how existing responses can

reduce the likelihood of individuals being trapped in crisis situations. Advancing understandings of the reasons behind their immobility may help current policy responses to begin to take their true situation into account. At present our understanding of the mechanics of trapped populations is too limited to suggest any clear policy measures to reduce their vulnerability or enable them to move when they felt they needed to.

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## The rise of trapped populations

April T Humble

**As border security increases and borders become less permeable, cross-border migration is becoming increasingly difficult, selective and dangerous. Growing numbers of people are becoming trapped in their own countries or in transit countries, or being forced to roam border areas, unable to access legal protection or basic social necessities.**

Internationally the border security agenda has been mainly pushed forward by Europe and the US, based on the perception of all cross-border migration as a potential threat that must be intercepted and controlled or blocked. However, in many other regions, countries are following suit in closing their borders to the 'undesired'. 'Border externalisation' in particular creates a ripple effect of countries further afield tightening their borders, as a result of diplomatic pressure to stem the flow of migrants; the EU, for example, puts pressure on states from West Africa to Central Asia to tighten their borders to prevent migrants reaching Europe.

The closing off of borders to migrants has spread across Europe, the Middle-East, West and North Africa, Central Asia, South Asia, South-East Asia and the US. South America is the only continent that has seen minimal activity in terms of heightened border security in recent decades.

Border controls do nothing to solve the problems citizens are subjected to within

countries. Border controls do however increase the difficulty of employing the age-old strategy of migration as a means to flee from danger or difficult living conditions. Even if migrants' circumstances fall within legal protection frameworks, strict border controls mean they often cannot access protection and are trapped on the 'wrong side' of the border. The result is people becoming stuck at, or drifting between, impenetrable borders, often with no way to escape to safer countries or to access help or legal protection. There are many hotspots where concentrated groups of people become trapped due to border security – such as in northern France, north-west Turkey, northern Bangladesh and North Korea – often congregating in informal 'migrant camps', with many similar scenarios worldwide.

These trapped migrants are vulnerable, exposed to the violations and abuses that are typical for those moving through countries irregularly, including: not having access to basic necessities; discrimination and abuse because of their foreign origin and irregular status; human trafficking (which exposes



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migrants to coercion, deception and physical and sexual abuse); dangerous or forced labour; and organ theft. The very existence of border security also often poses grave threats such as injury or death from electric fences or being violently abused by border guards. Accounts have also been told of migrants being pushed back from borders by guards – back into the sea or into desert areas such as in North Africa or Mexico where risk of death is high. As migrants often try to avoid detection, or attempt to disappear among the settled population, or due to their irregular status are not recognised or respected by local populations or authorities, the struggles of millions of migrants worldwide go unaccounted for.

Climate change is predicted to result in changing demographics and increased migration across the globe and the current trend of sealing off borders is going to present serious problems for those seeking safer and more habitable areas to live. For example, the Sahel region has begun to experience increased desertification and both a decrease in precipitation and a change in precipitation patterns. Migration is already being used as a logical coping strategy in response to climate change and its complex effects in this area. However, national borders in the region – such as between Morocco and Algeria and between Mauritania and Mali – are becoming increasingly impermeable and dangerous for migrants to cross, with reports of migrants approaching the borders being shot at, sometimes fatally, by border guards.

Large proportions of populations affected by climate change will be forced to try to move into safer and more habitable areas but will be prevented from doing so. It seems that border security is set to continue increasing in terms



Families of migrant workers wait under a staircase in the arrivals hall at the Egyptian-Libyan border post at Sallum, awaiting clearance to enter Egypt, 2011.

of the implementation of technologies and methods as well as in geographical expanse. Despite this increase, this phenomenon at a global level is seeing little or no attention in academic, humanitarian or even political spheres. Given the threat of a global surge in trapped populations, research is needed in areas such as how and where migrants can access asylum systems; ways to identify and safeguard trapped populations; and hotspots of where potential future increased migration flows will be blocked by securitised borders.

Bolstered border security means we need to create a commonly adopted, functioning and effective method for migrants to apply for refugee status prior to reaching their desired destination country. This would allow many vulnerable people to seek asylum without being forced to embark on long and arduous journeys, or becoming trapped in dangerous situations and being exposed to multiple human rights abuses, in the attempt to access safer countries.

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## Misconceptions about human trafficking in a time of crisis

Elżbieta M Goździak and Alissa Walter

**Both natural and man-made crises are considered by many to be prime environments for trafficking in persons. However, the evidence for this is thin.**

The relevant Protocols define people smuggling and trafficking differently<sup>1</sup> but in reality smuggling and trafficking networks are not distinct and many trafficking situations start as smuggling. Therefore, smuggling and trafficking should be thought of as interrelated phenomena – on a continuum from tolerable forms of labour migration to trafficking – perhaps particularly in the context of humanitarian crises when individuals in physical danger or dire economic situations might be actively seeking out smugglers to facilitate their migration from crisis-affected areas.

We feel that [recent] disasters disproportionately impacted the most vulnerable sectors of society – whether that's migrants, job seekers, or poor families – making them primary targets for exploitation and enslavement.

Luis CdeBaca, US Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, 24 May 2010

Interestingly, trafficking stories became attached to the disaster narrative in the context of the Indian Ocean tsunami of 2004. While the tsunami did not create rumours about trafficking, it started a reporting trend. Similar stories about increased trafficking of women and children continue to be repeated in the context of other crises. Western media reports that, for example, criminal gangs were befriending children orphaned by the tsunami and selling them to sex traffickers are contradicted by experts who have said that there was virtually no increase in verified incidents of human trafficking in countries hit by the tsunami. After Cyclone Nargis hit Myanmar in 2008, a UNICEF spokesman said: "We've had no reports of an increase in trafficking numbers. If there were such

report[s] I would be cautious about using [them] since there are no accurate figures on the numbers of people who are trafficked on a regular basis prior to the cyclone."<sup>2</sup>

The fear of increased vulnerability of Haitian children in the aftermath of the earthquake of 2010 was thought to be understandable given the trade of children in Haiti which existed before. Unfortunately many of the trade networks have links with the international adoption 'market'. The association of child trafficking with inter-country adoption might strike some readers as obvious, others as offensive, but in the context of the aftermath of the earthquake it provoked exaggerated stories of child kidnapping for international adoptions.

Interestingly, other natural or manmade disasters have sparked few concerns about human trafficking, showing that there are inconsistent assumptions about which crises and populations are most vulnerable to trafficking. The 2012 nuclear crisis in Japan, for example, did not cause speculations about trafficking.

Scholarly literature on trafficking in persons in armed conflict is robust in terms of policy and legal analysis but very limited in terms of empirical data on actual cases of trafficking. Reports issued by human rights groups and humanitarian assistance organisations working in conflict and post-conflict situations tend to discuss risks for trafficking related to perceived vulnerabilities mainly of children and do not provide reliable data on the prevalence of trafficking in conflict and post-conflict situations, although there is some evidence of the increased demand for sex workers by military



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and peacekeeping personnel. The question remains whether these reports conflate increased demand for sex workers with increase in trafficking for sexual exploitation.

In the current Syrian context, the label 'trafficking' is often used where a more nuanced discussion about gender inequalities and exploitation of vulnerable women would be warranted.

There seems to be a considerable difference between what media and advocates in the global North stress and what reports originating in the global South emphasise. After the Indian Ocean tsunami, when the media frenzy died down, UNICEF commissioned assessments of media reporting of the disaster which noted that local newspapers in Indonesia and Sri Lanka were very suspicious of stories of child trafficking from the beginning.

Anti-trafficking initiatives must encompass efforts to prevent trafficking for different forms of labour, not merely for sexual

exploitation. In both cases – sex and labour trafficking – attention needs to focus also on men and boys, not just on girls and young women. Although the root causes of trafficking, including poverty, underdevelopment and a lack of viable livelihoods, are exacerbated by crises, empirical data corroborating the hypothesis that trafficking in persons will increase significantly during crises is lacking. Without outcome and impact evaluations of existing anti-trafficking strategies, international and local actors will continue to design prevention strategies in an empirical vacuum.

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2. <http://tinyurl.com/IRIN-Myanmar-trafficking>

## International cooperation on the North Korean refugee crisis

Markus Bell and Geoffrey Fattig

**The biggest challenge concerning North Korean refugees is that, as yet, there is no international framework for how to respond once these individuals have crossed the border.**

Crossing the heavily guarded 38th parallel that divides North and South Korea is virtually impossible, so a majority of refugees attempt to travel through China until they reach South-East Asia. Push factors, such as widespread human rights violations, hunger, economic problems, environmental disasters and war, are reinforced by strong pull factors such as seemingly better living conditions in other countries.

Once refugees get out of North Korea, however, China continues to forcibly repatriate all North Koreans found within its borders. Previously, North Koreans

apprehended within the borders of countries including Thailand, Vietnam and Laos would be handed over to representatives of the South Korean government. The informal agreement existing between South Korea and third countries now seems untenable, as does the future of the 'Underground Railroad' used to spirit North Korean refugees out of China. Yet the international community has not found a coherent voice with which to condemn the actions of the Chinese and find or impose a better, more humane way of dealing with this crisis. Time and time again it is the so-called big picture issues that dominate the headlines and the exchange

between the powers of the region. It is high time the international community called for action, beginning with the demand that the human rights of these individuals be included on the agenda of any future discussions.



Markus Bell

Markets offer temporary employment for North Koreans during their often slow movement south. Yanji, Jilin province, near the North Korea border.

Once in China, all North Koreans exist without protection or legal recourse. With no means of living legitimately in China, North Korean refugees are not only vulnerable to forced repatriation if apprehended by the Chinese police but are also easy prey for human traffickers.

The crisis of North Korean refugees is a gendered crisis, with the majority of North Korean women who arrive in South Korea reporting some form of sexual abuse during their journey. Over 70% of those leaving North Korea are women – mainly due to the greater space for activities outside the home of women in North Korea – many of whom suffer sexual abuse, including falling victim to human trafficking at the hands of migration brokers who operate outside the law. Many North Korean women are sold to Chinese men as brides, or forced into prostitution to pay off debts accumulated while escaping from North Korea. A few of the ‘luckier’ women who find themselves victims of human trafficking are able to escape and, often with the help of aid organisations, make their way to South Korea but even here they

may struggle, fearing to speak lest they be stigmatised for having been prostituted.

Real change could begin from what is already in place, that is, by formalising the informal networks through which North Koreans have made their way through China and into South-East Asia. This would include creating a number of UN-mandated safe havens in countries that already provide sanctuary for North Korean refugees, albeit in less accommodating prison cells. The role of the Chinese government would simply be to do nothing: that is, to cease its repatriation of North Koreans.

The next step would be regulation of the informal people-moving industry that currently operates with impunity throughout the region. Although there is a very real need for the services they provide, the shadowy nature of the industry continues to prove highly problematic. Ideally, migration brokers/people smugglers would need to be registered through official means – a consulate or at least a government official with a knowledge of who is operating and when they are in the process of guiding.

Excessive introspection regarding the likelihood of the collapse of North Korea and a resultant tidal wave of refugees aside, the international community has to be willing and prepared to manage the crisis of North Korean refugees that is happening in the present. For the nations of the region the biggest challenge will be convincing China of the benefits of turning a blind eye instead of contributing to the problem by forcibly repatriating North Koreans to an uncertain fate. This can only happen, however, if the global community is ready to accept that this constitutes a humanitarian crisis and is willing to engage China – and each other – on this issue.

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## New Orleans: a lesson in post-disaster resilience

Paul Kadetz

**Factors that foster social cohesion in communities – such as shared long-term networks and shared community identity, central organisation to which the community adheres, and established trust – have been identified as critical for post-disaster resilience and recovery.**

The flooding of the city of New Orleans in September 2005 during Hurricane Katrina resulted in the permanent displacement of primarily poorer, and often female, African-American residents. Many of those who were evacuated before and after the hurricane were unable to return to New Orleans.<sup>1</sup> The US government officially designated the residents of New Orleans who left the area before, during or after Hurricane Katrina as ‘evacuees’. The designation of ‘refugee’ has often been resisted by governments due to the fear of consequently needing to offer the same protections and interventions to disaster victims as those reserved for political refugees. The term ‘evacuee’ sounds less urgent and suggests a lesser need for state intervention and assistance.

Disasters can effectively create a blank slate for states and venture capitalists to take advantage of and potentially make permanent the displacement of marginalised people.<sup>2</sup> In post-Katrina New Orleans three crucial sectors were privatised: housing, education and health care. The City Council unanimously voted in 2007 for the destruction of 4,500 low-income public housing units (of the total of 5,100 pre-Katrina units), thereby eradicating the possibility of public housing for a majority of low-income forced migrant families. The public school system was dramatically reorganised and now more than half of school-age children attend privatised schools.

In terms of health care, there had been a single public hospital in New Orleans to serve the needs of low-income residents. Though initially flooded, the hospital was deemed fit to reopen after the US military thoroughly cleaned it. However, the Board of Louisiana State University, which owned the building, refused to allow the hospital to re-open,

effectively leaving lower-income residents without a hospital. Thereby, low-income forced disaster migrants dependent on public assistance were effectively prohibited from returning to New Orleans due to the cessation of public assistance across these key sectors. Regardless of the actual effects on people, these changes were rationalised as a means to protect the well-being of evacuees “for their own good”, subsuming any question of citizen rights and recourse to justice.



Entrance to park area opposite Mary Queen of Vietnam Catholic Church, the cultural heart of Village L'Est in New Orleans East.

Post-disaster recovery in New Orleans also resulted in the forced migration of entire communities through a process known as ‘green-spacing’, whereby city planners designated vulnerable low-lying residential areas as non-residential park areas. Although the plans ultimately failed, many communities were discouraged from rebuilding. However, one community refused to accept any rationale for relocation and did return to rebuild their community.



Entrance to the residential neighbourhood areas of Village L'Est, showing both US and Vietnamese flags.

In 1975, Catholic North Vietnamese who were being held in refugee camps in the US were invited by the Archbishop of New Orleans to form a community. As a result, in 1980 a new parish – called New Orleans East – was formed with approximately 6,000 Vietnamese residents. Activity centred around its central church, Mary Queen of Vietnam. Disregarding the City Council ordinance to turn New Orleans East into a non-residential green zone, the majority of Vietnamese residents returned to their homes less than five months after the hurricane. The priest of the local church, Father Vien, and his church staff displayed tenacious leadership, working tirelessly to make their way through the morass of city, state and federal bureaucracy to secure the mass of permits and funds required for rebuilding their community.

The members of this hitherto quiet and compliant community were converted into community activists refusing their green-space designation and almost immediately upon return, they took the rebuilding of their community into their own hands. More importantly, the rebuilding of their community was specific to the needs and the desires of the community, a development that could only be effectively executed from within the community. No other community in New Orleans went to such lengths not only to return but to rebuild itself

on its own terms, as opposed to passively 'participating' in the City Council's plans.

The social trust that has been essential to the cohesiveness of this community network both before and after the disaster was found to be seriously eroded after Katrina in many other communities with disenfranchised residents, including in similarly ethnically homogeneous communities. This highly cohesive Vietnamese community of three generations of refugee families migrated to the US together and have shared long-term networks and a shared community identity. Furthermore, cohesiveness was fostered by the insularity of a community whose central engagement with one church helped to reinforce community identity and establish trust. Thus, these assets of the Vietnamese community of New Orleans East, that differentiate it from the other affected communities of New Orleans, may have been essential for its marked resilience in post-disaster recovery.

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1. This article is based on 155 in-depth semi-structured interviews with a purposive sample of stakeholders conducted over a period of two years.

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## Nuclear disasters and displacement

Silva Meybatyan

**The lessons of the Fukushima nuclear accident in 2011 seem to be the same as those from Chernobyl 25 years earlier, despite the different political settings. Apparently not much had been learned.**

The two worst nuclear accidents to date – Chernobyl in the former Soviet Union (USSR) and Fukushima-Daiichi in Japan – occurred as the forces of nature combined with human error to bring about a complicated cluster of human problems that displaced much of the affected populations and left millions more trapped in contaminated areas.

On 26 April 1986, an explosion at the Chernobyl nuclear power plant in the Ukraine caused a fire that lasted for ten days and radioactive debris to spread over thousands of square kilometres. At the time of the incident, about 230,000 people in 640 settlements in the European parts of the USSR were thought to be exposed to external gamma radiation and/or internal exposure through the consumption of contaminated water and locally produced or gathered food. In the following 20 years, numerous assessments revealed an increasing number of people affected in the USSR, including people evacuated from the exclusion zone, and residents who remained trapped in radioactive ‘hot spots’.

On 11 March 2011, tsunami floods damaged four of the six power units of the Fukushima-Daiichi nuclear plant in Japan resulting in contamination of as much as 1,800km<sup>2</sup> of land with particular ‘hot spots’.

### Managing the crisis

By all accounts, the authoritarian style of governance associated with the Soviet regime and the fact that the immediate area surrounding the plant was not densely populated were beneficial in the early stages of the crisis. The relative success of an immediate response, however, was hindered somewhat by the lack of information disseminated to the public as the weeks, months and years passed.

Prior to the disaster, the USSR had policies in place for measures that should be undertaken in the event of radioactive contamination, which included instructions from medical experts on when local and central government should evacuate affected populations, depending on their level of exposure. Hours after the event, preliminary radiation readings prompted the authorities to draw a 10km radius around the plant, from which everyone was to be evacuated within a few days. One week later, as more information was uncovered as to the scale of the disaster, a government commission established to deal with the aftermath extended the exclusion zone to 30km.

The same day as the tsunami occurred the Japanese government instructed residents living within a 2km radius to evacuate. As with Chernobyl, over the following weeks the zone was extended outwards to 30km.

Around Chernobyl, roadblocks were established to prevent privately owned cars from leaving without authorisation, and buses were chartered from outside the contaminated zone. This limited the spread of contamination from inside the exclusion zone and facilitated the evacuations which started the next day, beginning with some 50,000 residents of Pripjat where power plant employees lived. Local government officials and Communist party leaders were told that people would be evacuated for only three days. The official announcement was very short, with no information about the dangers of exposure to radiation. The absence of clear instructions on evacuation led to numerous problems about belongings left behind, including personal documents. Close to 5,000 people remained in Pripjat after the evacuation. Some were left there to assist with clean-up activities,



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The buried village of Kopaci, located 7km from the Chernobyl nuclear power plant. After evacuation, many villages were bulldozed and buried because of high contamination levels.

while others refused to evacuate without their farm animals, tools and equipment.

In order to reduce panic, the government increased the level of the permissible annual dose of absorbed radiation in the Ukrainian capital, Kiev, avoiding mandatory evacuation of millions. However, children between 8 and 15 years old were sent to summer camps, and pregnant women and mothers with young children and infants were sent to hotels, rest houses, sanatoria and tourist facilities, dividing many families with little consideration for the lasting social effects.

In early June 1986, 'hot spots' were discovered outside the 30km zone, leading to the evacuation of a further 20,000 people. By the end of 1986, some 116,000 inhabitants from 188 settlements had been evacuated, as well as 60,000 cattle and other farm animals. Thousands of apartments were made available in urban centres, and 21,000 new buildings were constructed in rural areas to house evacuees, although people were spread throughout the USSR. The upheaval induced by the break-up of the USSR five years after the disaster cannot be underestimated, both in terms of migration implications and the impact on responding to the lingering effects of the crisis.

Following Chernobyl, the System for Prediction of Environmental Emergency Dose Information Network System (SPEEDI) computer system was designed in Japan to

predict the spread of radioactive particles in order to effectively assess the situation and guide evacuations. However, most radiation dose-monitoring equipment and meteorological monitors were either damaged by the tsunami or were out of service because of the loss of power. In addition, the models did not incorporate all the variables needed to accurately calculate human external exposure and inhalation so the local authorities were reluctant

to rely heavily on them in their decision-making process. There were also reports that initially the authorities did not know about SPEEDI, and later on played down the data to dismiss the severity of the accident for fear of having to significantly expand the evacuation zone, and to avoid compensation payments to still more evacuees.

In Fukushima, on 25 March approximately 62,000 residents were advised to evacuate voluntarily or to stay indoors. Orders to 'shelter in place' or to voluntarily evacuate were unclear and long-winded, leading some people to move into areas with high levels of radiation and eventually being evacuated multiple times. According to the Nuclear Accident Independent Investigation Commission (NAIIC), the Japanese government was slow in informing the municipal governments and the public about the accident and its severity. Many people were unaware of the crisis and did not take essential items when they were evacuated. For those being evacuated the greatest advantage was their level of connectedness to outside areas such as employment or relatives and friends outside the region. Others were at a disadvantage because their only recourse was to follow government-organised evacuation and be placed in temporary housing.

Radiation is invisible, and at first no obvious factors force people away or hinder migration into these regions. Migration back to contaminated areas of the Ukraine was



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reported as early as the end of 1986, only eight months later. The demographic composition of the returned population consisted mostly of the elderly who had had difficulty adapting to the new places and wanted to live out their remaining years in their homeland, and those who thought of Chernobyl-related financial benefits as their only means of survival. Poverty caused by resettlement, restrictions on agriculture, lack of rehabilitation and livelihood restoration programmes, and the effects of the collapse of the USSR, led to ever more people claiming such benefits.

### Lessons

Although the immediate evacuation after the Chernobyl disaster was carried out swiftly and effectively, there was no clear understanding of the far-reaching consequences, and no structured resettlement plan to deal with these consequences in the medium or long term. Determining obligations and responsibilities for offering protection to those moving is not simple, especially in the context of post-Soviet emigration where it is difficult to distinguish between migrants seeking economic opportunities and those fleeing because of health risks. The disintegration of the USSR and the difficult transition process intensified the consequences of the Chernobyl accident and the complexities around responsibilities for those affected.

Some 25 years later, the Fukushima-Daiichi nuclear accident raised questions over lessons learned and lessons yet to be learned from Chernobyl in terms of preparedness and mitigation of nuclear disasters but also in terms of normative and implementation gaps in dealing with the consequences of these crises. In the context of both crises, tens of thousands were permanently displaced from the immediate vicinities; thousands made the decision to move because of health concerns, environmental degradation and collapsed infrastructure; and millions remained in contaminated

areas due to an absence of resources and/or opportunities, financial constraints and special attachment to their home.

In both the Chernobyl and Fukushima cases, strong governments responded with a heavy-handed approach that proved effective, to a certain extent, in evacuating immediate areas in the short term. Interestingly, the governments of Japan and the USSR both adopted top-down governance approaches too in how they communicated to their populations in the context of humanitarian



Checking ambient radioactivity levels in 2011 in the abandoned city of Pripyat, 2km from the Chernobyl nuclear power plant.

crises triggered by nuclear disasters. However, a lack of information relayed to affected populations exacerbated long-term effects of the crisis on these populations. Indeed, one of the major, and unanticipated, consequences of these disasters has been the psychological effects that have resulted from unreliable and contradictory information, along with the anxiety induced by ill-planned medium- and long-term relocation efforts, the disruption of social ties, and lingering health concerns. An estimated 1,539 stress-related deaths occurred in the context of evacuation from Fukushima, which arguably could have been prevented by more active consultation and communication by the government with affected populations.

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## Regionalism: a strategy for dealing with crisis migration

Liliana Lyra Jubilut and Erika Pires Ramos

**Regional solutions are becoming a strategic tool in dealing with the lack of globally agreed protection for crisis migrants.**

The increasing scope, scale and complexity of population movements which are not covered by the existing mandates of international agencies or by states (and which in general affect several countries along a migration route) challenge the ability of individual states to respond and point to the need for joint strategies. In order to tackle the lack of legal protection or status of people involved in such movements, proposals have ranged from the expansion of existing systems and regimes – mainly an enlargement of the normative concept of refugee – to the creation of new legal concepts and institutions. Little though has been achieved, despite existing proposals in progress, among which two deserve mention.

First is the Draft Convention on the Protection of Persons in the Event of Disasters being developed by the UN International Law Commission which aims to regulate cooperation and assistance among affected and non-affected states, establishing the duties to cooperate, seek assistance, consent to external assistance and offer assistance to people affected by disasters.<sup>1</sup>

The second is the Project for a Convention on the International Status of Environmentally Displaced Persons, drafted by research groups at the University of Limoges and other contributors (individuals and institutions), which proposes recognition of a specific legal status for a new category of migrants, that is, potential and actual victims of natural, environmental and technological disasters.<sup>2</sup> This proposal does not create new rights for the people affected nor an obligation on states to protect them but aims to adapt the protection of existing human rights to the specific condition of environmentally displaced persons.

The apparent lack of success of these and other initiatives seems to stem from the lack of willingness to adopt practical concepts of responsibility-sharing, the constant intertwining of the issue of migration (even forced displacement) with economic and security concerns, and the perception that this is a problem for which a one-time commitment will not suffice, as it requires political will for long-term endeavours and solutions.

An alternative route that could allow for new developments is a focus on regionalism. This strategy would not compete with existing efforts but would aim to complement them. Regionalism seems to be working in the field of IDPs in the absence of a global system, especially since the Kampala Convention. It has also worked in the Latin-American context of refugees through the expanded definition in the Cartagena Declaration,<sup>3</sup> as well as the regional approach to resettlement stemming from the periodical review of this document.<sup>4</sup> In 2012 the MERCOSUR Declaration of Principles on International Protection of Refugees highlighted the need for strengthening the regional humanitarian space, encouraging all states to adopt the wider definition of refugees from the 1984 Cartagena Declaration.<sup>5</sup>

In the same region, the institution of political asylum, recognised in international regional law since the 19th century and since the mid-20th century by the International Court of Justice as regional customary law, is another example of a regional initiative on migration. In light of the regional effects of crisis migration, regional solutions that are tailored to the specific scenarios may be politically more acceptable, and therefore more effective and easy to apply, than universally established formulae.

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Indeed, it seems that regional solidarity – or at least the perception of regionally shared problems and situations – is more likely to succeed in the present world, giving time for the global system to come up with a comprehensive system of protection for migrants. Such a focus on regionalism would not jeopardise any international search for universal solutions but would enhance a rights-based approach to humanitarian situations.

That said, existing regional initiatives do not eliminate the need for adopting a global instrument and policy that set minimum general standards of protection for internally and externally displaced people and that, if necessary, provide access to international assistance but they can be a stepping stone towards them. In this sense, regionalism, especially in Latin America, emerges as a strategic option that can provide an open dialogue among states and non-state actors. It can, thus, stimulate cooperation to

elaborate more coherent policies and legal frameworks to address common impacts on the countries of the region, as well as allow for the effective protection of these migrants.

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## Environmental stress, displacement and the challenge of rights protection

Roger Zetter and James Morrissey

**Examination of migration histories and current politics in Kenya, Bangladesh, Vietnam, Ethiopia and Ghana sheds light on how rights are articulated for groups and individuals displaced in a context of environmental stress and climate change. Both migration and rights are sensitive issues in these case-study countries, and the conjunction of the two is especially sensitive.**

The existence of a protection gap for environmentally displaced people is surprising given the scope of protection available to other groups of displaced populations in domestic and international law. However, it may make little sense to privilege individuals displaced by the impacts of climate change (or other forms of environmental stress) over other 'involuntary migrants' moving for a variety of reasons who are similarly outside already well-established categories or, conversely, for whom there is established protection apparatus such as the Guiding Principles on Internal Displacement.<sup>1</sup>

Indeed, with the exception of the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (known as the Kampala Convention),<sup>2</sup> there are no international legal instruments or norms that deal specifically with the protection of the rights of those whose displacement could be attributed in some way to environmental or climatic factors. Yet the countries of our study have not applied these instruments to the situations of displacement related to environmental change. This article explores why this is so.

### Displacement, protection and rights

In general terms, protection in relation to people on the move is concerned with safety, security, dignity and reducing vulnerability, as well as securing or safeguarding political, civil, social, economic and cultural rights, including freedom of movement. Environmental stress in general and climate change in particular potentially impinge on the enjoyment of this wide range of domestic and internationally protected rights. In other words, ensuring rights and protection is part of the wider challenge of managing the consequences of environmental change, and particularly climate change. Given the likely predominance of internal migration, this article focuses on national responses.

In practice, the discourse of rights is frequently reduced to a focus on material rights, at the expense of the much more challenging issue of affording political rights. In **material** terms, protection may be conceived of in terms of physical assistance to overcome the impact of flooding and shelter provision in resettlement programmes, for example. It is this material representation of rights protection which dominates current thinking in the context of environmental displacement. But the protection of rights may also be conceived of in **structural** terms, since a process to tackle the structural and systemic inequalities and risks that underlie disaster vulnerabilities and the impacts of environmental stress – such as land rights or access to compensation – is inherently political and thus far more problematic.

The discourse on rights protection among the national agencies addressing environmental change in the five country case-studies has focused on material rights, to the exclusion of the provision of political rights. We suggest that migration histories and current politics shape the way in which migration policy regimes are conceived and framed, and how rights are articulated for those groups and individuals displaced in a context of environmental stress and climate change. Thus, it is through analysing the politics of migration and rights that we can better

appreciate why it is that these governments do not, as yet, accord a full range of rights to those who are displaced, or threatened by displacement, in this context.

### Kenya

Questions of migration and population displacement in Kenya are highly politicised as a result of their close relationship with issues around land, unequal access and social grievances. These issues can be traced back to the colonial period and its practices of eviction (i.e. forced migration) and unequal development. They underlie the violence and conflict-induced displacement following elections in 1992, 1997 and 2007. And it is a legacy that conditions how displacement in the specific context of climate change and environmental stress is addressed.

The Kenyan Constitution provides some level of rights protection for displaced persons. However, Kenya has struggled to incorporate the rights-based norms of the Guiding Principles and the more recently proposed national guidelines on IDPs into its national legal or normative frameworks. The adoption of a comprehensive framework on IDPs, as proposed in the National Policy initiative and underscored by the Kampala Convention, could be a milestone in rights protection in Kenya and could be extended to environmentally displaced people. The domestic proposals, however, concentrate on addressing the immediate displacement impacts of recent political unrest, the peaceful reconstruction and rehabilitation of the country, and natural disasters.

The focus on disasters simultaneously ignores the impacts of slow-onset environmental stresses and frames the issue of displacement in terms of material deprivation. The latter allows for a focus on tackling material rights, such as food assistance, while leaving the crucial issue of political rights unaddressed. This is thought to be driven, in part, by the fact that addressing such concerns would require the resolution of the underlying issues over asymmetries of power and historical grievances. In such a

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context concerns about the rights of those susceptible to the displacement effects of climate change and environmental stress remain largely unaddressed in Kenya's legal and normative frameworks.

### **Bangladesh**

The 1947 Partition of India and then the war leading to Bangladesh's independence in 1972 produced huge population upheavals. Currently there are millions of Bangladeshis in India, many of whom have migrated from the environmentally fragile coastal areas in the southwest of the country as well as from the riverine communities affected by erosion.<sup>3</sup> The presence of such groups is largely unacknowledged officially.

These events render population mobility a sensitive issue in national discourse. Despite widespread historical and current displacement, and the appearance of terms such as 'environmental refugees' or 'climate victims' in official Bangladeshi documents, Bangladesh has not acceded to the 1951 Convention, there is no legal definition of IDPs and the Guiding Principles have not been incorporated into domestic law.

Instead, government plans and policies dealing with the impacts of environmental change contain provision mainly for mitigation and post-disaster relief and recovery measures – material provision rather than more fundamental rights protection. The rights of people displaced or susceptible to displacement in the context of environmental stress and climate change are yet to gain explicit recognition in the legal and constitutional framework, and there is no machinery to define what rights those who are permanently displaced might expect and how these might be protected. Paradoxically maybe, past episodes of forced migration in the country have not resulted in a willingness to tackle issues of 'displacement' and 'displaced people' in a more profound manner.

### **Vietnam**

The dominant contextual feature shaping Vietnam's national policymaking on the

rights of groups displaced by environmental stress remains the dynamics surrounding the operation of its centrally planned economy. The establishment of Vietnam's socialist government in the 1970s not only reframed the political and economic organisation of the country but also entailed the relocation of approximately 6.7 million people (probably a significant underestimate) between 1976 and 1985 – with the regulation of migration continuing to be a core component of the centrally planned economy. Under such conditions there is no acceptance of individualised rights-based approaches, or a discourse on protection. The government has come to interpret 'displacement' as a reactive and uncontrolled process, in contrast to its proactive relocation strategies and regulated migration policies which relocated about 6.6 million people (about 8% of the population) between 2004 and 2009. There is no mention of displacement or resettlement in government policy documents, with the term 'relocation' being preferred and, accordingly, there is no scope to apply the Guiding Principles. The state's view on spontaneous, un-managed migration is reflected in the invisibility of unregistered migrants in the state system and therefore the question of rights does not arise.

Yet, migration in the country is expected to increase with the number of spontaneous migrants increasing significantly under growing environmental and economic pressures. In this context the government is implementing planned resettlement among a large number of households currently living in the most flood-prone parts of the Mekong delta. Thus, in Vietnam climate change appears to be mainstreamed as a developmental, but not a humanitarian, policy concern, certainly in comparison to the other case-study countries. With the scope for political engagement being so severely constrained in the country, the focus remains on providing material rights, to the exclusion of political ones.

### **Ethiopia**

The Derg government (1976-91) used a major drought in the 1980s to justify large-scale, violent (in effect forced) resettlement strategies.



Adverse growing conditions in the Ethiopian highlands provide a context for framing development efforts exclusively in terms of material rights.

Since such strategies were principally aimed at countering the efforts of insurgent forces rather than securing livelihoods for individuals experiencing drought, the lasting impact has been to arouse popular suspicion of relocation programmes as a means to address environmental problems. As a result, the current government's approach is to focus on the provision of relief to environmentally stressed areas and on transforming livelihoods so as to reduce the imperative to move in the first place. Such efforts however have focused on the provision of material goods which have been tied to political compliance with what is, effectively, a one-party state.

The government does not use the term IDP and has not implemented the Guiding Principles. Although Ethiopia is a signatory to the Kampala Convention, the government has shied away from international agreements on human rights, which could be used as a benchmark of its failure to meet its obligations to its citizens and thereby undermine its claims to legitimacy. The positive elements of expanded social protection for, and efforts at ensuring the material wellbeing of, all migrants in Ethiopia – including those responding to environmental stress – should be viewed with caution; the

institution of such material rights may well come at the expense of political rights.

#### Ghana

Ghana has a long history of hosting refugees from the region. During colonial times land expropriation and the resultant forced displacement and relocation of populations were significant. While there has been some episodic and small-scale refugee and 'forced' internal displacement in Ghana, present-day internal movement is strongly linked to colonial and post-colonial politico-historical determinants and has been absorbed into Ghana's social and economic fabric, thus rendering it far less politically sensitive than in the cases of Kenya and Ethiopia, for example. Accordingly it has limited political saliency.

The discourse in Ghana focuses on reconciling environmental pressures with socio-economic priorities in order to achieve sustainable goals of national development, rather than on population displacement. In this regard, Ghana too could be said to be adopting a developmental rather than a humanitarian response.

This is not to deny that the issue of migration itself is a pressing one. Rural to



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urban migration, farmer-herder conflicts in the transition zones, the displacement impacts of ecological degradation in the sub-Saharan north and tropical coastal south, and growing acknowledgement of the potential impacts of environmental stress and climate change on population mobility, are all present. Displacement 'induced by' environmental degradation in the northern regions of the country and the coastal belt are already showing up the emerging problem of whether the rights of those currently affected will be protected, and if so how.

However, migration and displacement issues are not yet linked to rights concerns and there is no rights protection architecture of norms and instruments dealing with population migration. In the case of people displaced by natural hazards and disasters, there are provisions under the 1996 National Disaster Management Act, which could, in principle, be extended in order to cover people displaced by slow-onset events such as climate change and thus invoking provisions of the National Disaster Management Organization. However, there is little evidence that Ghana seeks to implement norms set out in the Guiding Principles and it has signed but not ratified the Kampala Convention.

On the other hand, as a member of the Economic Community of West African States, it does accede to the regional migration initiatives which support relatively free population movement, a potentially significant mechanism as sub-Saharan environmental stress intensifies across the region.

### Conclusions

Episodic migration histories, the complex political milieux within which migration sits and the unwillingness to engage with migration as an arena of public policy constitute both the backdrop to, and an explanation of, the reluctance of the governments to develop policy frameworks which would effectively tackle the current and future population displacement impacts associated with climate change and environmental stress.

Resistance to engaging with the politics of and policies for migration is underpinned by the reluctance of these countries – combined with different manifestations of weak governance structures – to address human rights issues. This is revealed in the reluctance in these case-study countries to develop legal and normative frameworks to protect the rights of migrants in general and specifically in relation to environmentally displaced people.

The protection of rights in the context of environmental stress is appropriated essentially in terms of material rights – for example restoration of livelihoods and resettlement to safer ground. This enables governments to acknowledge material needs whilst subverting the structural challenge of affording political rights – empowerment, decision-making and full participation in resettlement schemes, for example.

Given the enduring political denial of migration and displacement as a policy and social challenge, and the political fragility which mediates their disinclination to develop systematic and structural responses to the protection of rights, the prognosis for the protection of the rights of those displaced by changing environmental or climate conditions is poor. Analysis suggests that limited effort is likely to be put into adopting 'guiding principles' or, if adopted, little energy will be expended in implementing them. This problem is not easily resolvable in the climate change context.

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1. [www.idpguidingprinciples.org/](http://www.idpguidingprinciples.org/)
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## Disaster Law

Stefanie Haumer

**The impetus for new disaster response laws lies in the gaps that exist in the scope and geographic coverage of existing international law. There are also gaps in the application of existing international norms, and especially in the ability of domestic laws to address common legal issues in international disaster relief and recovery operations.**

Various international agreements and soft-law instruments contain a wide range of regulations that are relevant during and in the aftermath of a disaster. This includes provisions concerning effective assistance on the ground as well as the protection of affected persons. For instance, people who migrate due to a disaster in their home country are not covered by the 1951 Convention relating to the Status of Refugees. However, provisions for a disaster or its direct aftermath can be found in **international** agreements, such as the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1979 Convention on the Elimination of all Forms of Discrimination against Women or the 1990 Convention on the Rights of the Child.<sup>1</sup>

In addition, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>2</sup> covers climate-related migrants who work abroad, although fewer states have ratified this agreement.

Relevant **regional** human rights agreements include the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1969 American Convention on Human Rights and the 1981 African Charter on Human and Peoples' Rights.<sup>3</sup> Neither of these treaties, nor the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa covers persons who leave their home due to, or in anticipation of, a slow-onset crisis.<sup>4</sup> The same holds true for the 1984 Cartagena Declaration on Refugees.<sup>5</sup> The 2005 Association of Southeast Asian Nations Agreement on Disaster Management and Emergency Response<sup>6</sup> deals with aspects of disaster risk, with a focus on prevention

and mitigation as well as on preparedness, emergency response and rehabilitation.

The only instrument explicitly addressing climate change induced disasters is the 2012 Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) in Africa<sup>7</sup> (known as the Kampala Convention), stating that States Parties are obliged to take measures to protect and assist persons who have been internally displaced due to natural or human-made disasters, including climate change. Another obligation under the Kampala Convention is that the States Parties shall devise early warning systems in areas of potential displacement. With this provision and the obligation for states to establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures, anticipatory movement too can be addressed.

Certain instruments, while not in themselves legally binding, at least have political impact and may indicate a trend, perhaps even contributing to the emergence of rules of customary law. These **soft-law instruments** include the 1998 Guiding Principles on Internal Displacement<sup>8</sup> and the 2005 Hyogo Framework for Action 2005-2015 contained in the final report of the World Conference on Disaster Reduction.<sup>9</sup> In addition, the Pinheiro Principles<sup>10</sup> are designed to provide practical guidance to states, UN agencies and the broader international community on how best to address the complex legal and technical issues surrounding housing, land and property restitution. And the Inter-Agency Standing Committee's 2011 Operational Guidelines on the Protection of Persons in Situations of Natural Disaster<sup>11</sup> aim to complement

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existing guidelines on humanitarian standards in situations of natural hazards.

At the regional level of the European Union, the 2012 Host Nation Support Guidelines are non-binding guidelines for the provision of host nation support to participating states delivering assistance during a major emergency, to complement existing international agreements and guidelines.<sup>12</sup> Non-EU states are encouraged to take the guidelines into account when they request and receive international assistance via the EU Civil Protection Mechanism. The guidelines aim to remove as far as possible any foreseeable obstacle to international assistance so as to ensure that disaster response operations proceed smoothly. They cover four areas: emergency planning, emergency management and coordination on site, logistics and transport, and legal and financial issues.

#### IDRL

The purpose of the International Federation of Red Cross and Red Crescent Societies (IFRC) International Disaster Response Law (IDRL) Guidelines is to provide states with an instrument which allows them to analyse their corresponding legislation and fill normative gaps if necessary. The aim is to strengthen the legal framework for international response to disasters and become better prepared to address regulatory problems relating to provision of international assistance. These Guidelines do not apply to armed conflicts nor to disasters that occur during armed conflicts, nor do they recommend any changes to existing international law or agreements.

The core part of the Guidelines suggests a number of legal facilities for entry as well as operations on the ground, with a strong focus on expediting regular procedures and reducing legal and administrative barriers in a disaster situation. Furthermore, affected states should, when it is in their power and to the extent possible under the circumstances, consider providing certain services (transport and logistic

support, use of buildings or equipment) at reduced or no cost to assisting actors.

Within the study that eventually led to the IDRL Guidelines, gaps were identified in the scope and geographic coverage of existing international law, as well as in the knowledge and application of existing international norms, and especially concerning the question whether domestic law is able to address common legal issues in international disaster relief and recovery operations.

An IDRL Model Act is being drafted to assist states to integrate the recommendations of the IDRL Guidelines into their national laws.<sup>13</sup> The model act is intended to complement the Guidelines and to serve as a reference tool and example to law-makers as they develop legislation appropriate to their national circumstances. A number of states have made progress in implementing the recommendations of the IDRL Guidelines, for example Colombia and Mozambique have brought in new policies and legislation.

IFRC and UNDP are working on a joint project to research, compare and consult on the efforts of various countries to strengthen how their laws support disaster risk reduction (DRR), particularly at the community level and focusing on implementation.<sup>14</sup> An area where effective legal frameworks might be necessary is the question of DRR in informal settlements (slums and shantytowns) from which people are at risk of displacement.

In 2007 IFRC set out a strategic framework for addressing humanitarian dimensions of migration and internal displacement and prepared policy papers among which was the Policy on Migration.<sup>15</sup> In its Strategy 2020 the IFRC's stated aims include: to provide assistance and protection services to vulnerable migrants; to strengthen migrants' and host community resilience through economic security, recovery and social inclusion within local communities; to improve equitable access to health care, psychosocial and social services; to be sensitive to addressing environmental

issues, especially push-pull factors of scarce resources and climate change; and to focus on changing the dialogue on migration, promoting social inclusion and addressing reintegration of migrants who choose to return, fighting xenophobia, stigmatisation, discrimination and violence (including gender-based violence, human trafficking and smuggling) towards migrants.

### Gaps and practical problems for displaced people

Large-scale disaster-induced displacement can be both a consequence and a cause of major social inequities. Humanitarian organisations and other assisting actors, including states, operating in the context of disasters face a wide range of practical problems arising in part from gaps in the existing legislation. In addition, there are problems affecting refugees and IDPs irrespective of their reason for migrating, although this reason often is a crisis or disaster and its consequences.

Several aspects contribute to gaps in the protection of migrants. To begin with, the existing instruments often are not legally binding and soft law can only be used as an advocacy tool. Binding regulations may not be ratified by crucial states or their enforcement is not monitored by an independent body. In addition, the specific agreements do not foresee a particular instrument for individuals to effectively claim their rights or the affected persons do not have the actual possibility and means to do so. So the existence of a legal instrument does not automatically lead to effective protection of the rights covered by that instrument.

Furthermore, these instruments, which grant certain rights to persons in an exceptional situation, are tailored rather narrowly. As a consequence, persons might not fulfil the criteria named in the various Conventions – especially the acknowledged reasons for moving – and therefore might not qualify for protection. This holds true, for instance, for persons who migrate not due to an acute disaster – which under some Conventions constitutes a reason – but because of a

slow-onset crisis. Further, persons moving voluntarily to avoid, for example, the impacts of a(nother) prolonged drought are not protected as they do not fulfil the criteria of relevant legal instruments. At the same time, law and regulation is just one tool in supporting DRR, and the law's effectiveness depends on good implementation.

Several (factual) problems probably cannot be resolved (legally). Hence, the focus should not only be on new regulations but on the actual implementation and enforcement of existing ones. The creation of a specific legal framework which applies to environmentally induced migration *per se*, for example, should not be seen as the answer to climate-related displacement, especially if it is not accompanied by the political will to implement and enforce this new instrument.

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## On policies of hospitality and hostility in Argentina

Irene Duffard Evangelista

Following the Haiti earthquake of 2010 the countries of the Union of South American Nations<sup>1</sup> undertook to receive Haitians in their countries. The motivation to migrate was linked to the hope of improving their lives in a context where all possibilities and opportunities had been destroyed by the earthquake. According to interviewees with Haitians in Buenos Aires: "After the earthquake there was nothing left...".

For Argentina to make a commitment to receive Haitians for 'humanitarian reasons', no specific regulations or clause were needed, as provision was already made for such an eventuality in Migrations Law 25.871 (unlike in other countries such as Brazil or Chile).<sup>2</sup> With the open-ended commitment in law there was no time limit involved, yet from November 2012 Haitians started having difficulties in obtaining this protection status and by 2013 it was almost impossible for them to claim rights under this heading. Similar situations are occurring in Brazil, Chile and Ecuador, which are also tightening their migration policies toward this population.

For this particular population group, it is unlikely that Argentina would have been a destination of migration were it not for the ease of entry and the free access to university study. However, Haitians

in Argentina face problems in work, housing, documentation, education, culture and discrimination, despite the law's commitment to the objective of promoting the insertion and integration into Argentine society of persons admitted as regular migrants<sup>3</sup> and its call on all offices of the state to favour initiatives tending toward the integration of foreigners in their community of residence.

In principle, for both state and society, 'allowing entry' to migrants to your country implies taking responsibility for these persons, for their food, housing and psychological wellbeing. The question that then arises is how, having been through traumatic experiences, they can be taken in, included and integrated into the host society with policies of hospitality and not of hostility to 'the other'.

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3. Migrations Law 25.871, Article 3 points e) and h)

## Disaster risk reduction and mobility

Patrice Quesada

We are faced with a complex relationship between mobility, risk and disasters. By fleeing, people can save their lives and sometimes some of their assets but they may also expose themselves to new risks, for instance when they end up in overcrowded temporary shelters. At the same time, lacking the capacity to move under extreme circumstances is itself a major cause of vulnerability. It is also apparent that mobility can be used as a preventive strategy; labour migration, for instance, can help diversify a household's income, thus strengthening resilience in the face of a disaster.

However, little attention has been given so far to the complex role of human mobility in opening up new livelihood opportunities, as well as in driving vulnerability and risk. In this context, how can

we make sure that we are not only investing in reactive humanitarian response but also working to decrease and even prevent forced migration through disaster risk reduction measures?

An essential step for advancing risk reduction measures at the local level is to define mobility-based indicators of vulnerability and resilience that can contribute to measuring and reducing human and economic losses resulting from disasters. In the process of identifying risk- and mobility-related indicators a number of issues have emerged that will require special attention from the disaster risk reduction community in the coming decades. These include:

- managing urbanisation processes, and in particular rural-to-urban population movements, to avoid the creation of new risks
- facilitating and managing rural-to-rural migration to strengthen livelihoods and allow for the sustainable management of fragile ecosystems (e.g. pastoralist communities)
- identifying best practices for improving planned relocation efforts in order to reduce exposure to natural hazards and environmental change (e.g. for communities in Small Islands Developing States)
- improving assistance and protection of vulnerable populations (e.g. migrants in crises and trapped populations).

The Hyogo Framework for Action is the main international risk reduction framework.<sup>1</sup> The negotiations for its successor in 2015 provide good momentum to develop tools to take into account the socio-economic costs and benefits of mobility from a risk reduction perspective and to ensure the recognition of mobility as an essential component of the Disaster Risk Reduction discourse.

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1. [www.un-documents.net/hfa.htm](http://www.un-documents.net/hfa.htm)

## The global governance of crisis migration

Alexander Betts

**There is no coherent or unified global governance framework for the different areas that have been subsumed under the umbrella of 'crisis migration'. This is not to say that when new challenges or labels arise new institution-building is necessarily required. Addressing emerging protection gaps such as those related to crisis migration requires creativity in making existing institutions work better across implementation, institutionalisation and international agreements.**

Given that there are significant protection gaps for different groups of vulnerable migrants affected by crises, to what extent are new international institutions required to address these gaps? Alternatively, is it realistic to believe that existing norms and international organisations might adapt or stretch to fill these gaps and address the emerging challenges, without the need for root and branch reform? Two simple concepts – 'regime complexity' and 'regime stretching' – can help us think about how existing institutions can adapt to new challenges.

### Regime complexity

The concept of 'regime complexity' refers to the way in which institutions may be nested (part of a wider framework), parallel (having obligations in similar areas) and overlapping (with multiple institutions having authority

over the same issue).<sup>1</sup> This concept tries to make sense of the way in which international institutions have proliferated and highlights the way in which an issue may be governed by a disparate range of institutions. It is especially useful for understanding how 'new' and emerging areas are implicitly subject to the governance of multiple, overlapping institutions. Indeed, the regime complex for crisis migration straddles institutions from across a number of policy fields: migration, human rights, development, security governance and humanitarian.<sup>2</sup>

Identifying regime complexity has a host of international public policy implications. First, it gives rise to the recognition of **implicit forms of governance**. Second, it highlights how some policy areas may be simultaneously governed by multiple regimes in ways that



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may lead to either **overlaps or gaps**. Third, where there are gaps or overlaps these may create a **case for improved coordination mechanisms**. These and other challenges are likely to characterise the governance of crisis migration within which – with the exception of the refugee field – no international organisation or regime enjoys de facto exclusive lead status. Many of the constitutive areas of crisis migration are organisationally characterised by ad hoc responses – that is, beyond refugee protection for those fleeing state persecution, there is enormous inconsistency in responses to crisis migration.

Each of the areas subsumed under the umbrella of crisis migration – cross-border displacement caused by serious human rights deprivations that fall outside the dominant interpretation of persecution (what I have called elsewhere ‘survival migration’<sup>3</sup>), ‘trapped’ or involuntarily immobile populations, anticipatory movements, and ‘mixed migration’ – are all subject to different implicit governance structures. In some cases these structures will adapt, or have the potential to adapt, to address formal ‘gaps’. Survival migration, for instance, is subject to governance by the refugee regime, the human rights framework, humanitarian response, as well as emerging networks such as the Nansen Initiative. In recognising implicit regime complexes, we need to consider how far existing governance can fill gaps.

### Regime stretching

The concept of ‘regime stretching’ helps to answer that question. It highlights the way in which a regime may adapt at the national level of implementation, even in the absence of adaptation at the levels of international negotiation or institutionalisation. This is a particularly important concept in a world in which new problems and challenges are emerging but where new formal institutions are created at a much slower pace. As problems emerge that were not within the scope of a regime at its creation, the norms and organisations may adapt (even without formal re-negotiation) not only through international bargaining or institutionalisation but also, at

the level of implementation, through ‘regime stretching’. Such institutional change not only occurs over time but can have different national manifestations at the same time.

Three recent cases of governance response are examples of whether and to what extent existing regime complexes are able to respond to the different sub-elements of crisis migration – and the extent to which regime stretching has taken place within the different areas: survival migration in the Horn of Africa in 2011, stranded migrants in Libya in 2011, and the combination of mixed migration, anticipatory movement and survival migration in Zimbabwe between 2006 and 2011. Each case reveals that in some areas existing institutions are functioning to address aspects of crisis migration but that more can be done to make existing institutions work better.

In the case of displacement resulting from the drought and famine in the Horn of Africa in 2011, the ability to link crisis migration to the refugee regime – because of the nature of refugee legislation and policy within Kenya and Ethiopia – meant that crisis migrants could fall within the mandate of UNHCR and so fleeing Somalis were able to receive protection as though they were refugees. While this enabled the refugee regime to stretch to address those fleeing the drought and famine, it has, however, strained the refugee regime almost to breaking point and even led to proposals for the creation of ‘safe havens’ within Somalia as an internal flight alternative.

In Libya in 2011, the situation of stranded migrant workers posed a challenge to governance that fell largely outside of established institutional responses. However, although based on an ad hoc response, the UNHCR-IOM cooperation on a joint Humanitarian Evacuation Cell in Geneva is a compelling source of future good practice for addressing the humanitarian needs of stranded migrant workers. With both Libyans and foreign migrants fleeing political instability, their exact status was ambiguous in the absence of refugee status determination.

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Nevertheless, they were registered and given a de facto form of temporary protection at the Egyptian and Tunisian borders.

The relatively limited number of people who attempted to cross the Mediterranean into Europe as a result of the conflict led to political tension over burden-sharing within the European Union (EU) and challenges to the Schengen Agreement on freedom of movement within the EU. In theory, regional governance in Europe should have offered temporary protection and related burden-sharing to protect people fleeing Libya. In practice, however, political divisions made implementation impossible.

Zimbabwe from 2006-11 was characterised by a form of 'mixed migration' insofar as the movements involved a complex array of motives and circumstances, and also included a significant number of anticipatory movements, with people leaving in large numbers prior to the elections in 2008, for example, in anticipation of significant violence. Many of those fleeing could also be classified as 'survival migrants', falling outside

the framework of the 1951 Convention but still fleeing serious human rights deprivations and in need of international protection.

Neighbouring South Africa allowed all Zimbabweans access through 'asylum-seeker permits', letting them self-settle with the right to work, pending assessment of their asylum claim. However, until 2009 the refugee recognition rate for Zimbabweans was extremely low and once Refugee Status Determination was complete, the Zimbabweans were open to arrest, detention and deportation. After April 2009, there were some attempts to adapt policy and the application of existing legislation; the possibility of applying the broader refugee definition contained in the OAU Refugee Convention covering events which "seriously disturb or disrupt public disorder" in the country of origin was mooted, for example.

The protection of Zimbabweans in South Africa has fallen between the cracks of different international organisations' mandates. UNHCR has consistently regarded most Zimbabweans as not being refugees;



Migrants and asylum seekers at the 'I believe in Jesus Church' shelter for men in the South African border town of Musina queue up for a free hot meal, provided by UNHCR.

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only the granting of asylum-seeker permits to all who request them has put Zimbabweans within the purview of UNHCR's mandate. The most relevant sources of protection for many Zimbabweans have been local NGOs, church organisations and diaspora organisations. Community-based self-protection strategies have filled some of the gaps left by the absence of adequate international or national-level responses.

In summary, the Horn of Africa case shows how, when there is a link to national refugee legislation, the refugee regime may stretch to cover gaps. In contrast, Libya highlights how the challenge of trapped and stranded migrant workers has required new and creative responses. Meanwhile, the Zimbabwean case shows how, when existing institutions have largely failed to adapt to complex mixed migratory movements, a range of informal structures and community-based self-protection mechanisms have filled some of the gaps.

### Policy

These cases highlight the variability that exists in the extent to which existing institutions are or are not fit for purpose in relation to the challenges posed by different aspects of crisis migration. In some areas, existing governance structures adequately address the humanitarian challenge. In other areas, structures exist in theory but there are problems of implementation in practice. In still other areas, there are gaps that need to be filled.

An important analytical feature of many 'new' trans-boundary problems that emerge and require international cooperation is that they relate to and touch upon the purview of a set of norms and organisations that already exist, even if the relationship is not explicit. Crisis migration is one such area that is implicitly embedded within a pre-existing set of institutions. In such a situation, it makes sense to begin with a principle of making existing institutions work better. At the level of **implementation**, a range of norms and structures exists; these have been signed and

ratified by states, even if they are not always fully implemented. Furthermore, states have signed up to and ratified human rights norms which have significant implications for how they should respond to crisis migration.

At the level of **institutionalisation**, there are ways in which existing norms or practices might be better incorporated within legal and policy frameworks. For example, the UN Convention on the Rights of All Migrant Workers and their Families has potential implications for the rights of stranded migrant workers in the context of crisis.

At the level of **international agreements**, once the possibility of improving existing institutions is exhausted, reforming international agreements need not imply the creation of new treaties or organisations. Instead, it may involve processes of consolidation in relation to existing norms and processes of coordination in relation to existing institutions. Soft-law frameworks may offer a means to provide an authoritative and applied consolidation of existing legal and normative standards. Similarly, when issue areas are embedded within organisational frameworks, creating improved coordination structures may help fill gaps.

The existing global governance framework for crisis migration can be understood as a regime complex, that exists at the global level in terms of the range of norms and international organisations of actual and potential relevance to addressing crisis migration. However, it also exists at the level of practice, where the implementation of the complex may have different manifestations in relation to different crises in different places.

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1. Alter, KJ and Meunier S (2009) 'The Politics of International Regime Complexity', *Perspectives on Politics* 7(1): 13–24.
2. See article by Jane McAdam, p10–11.
3. Betts A (2013) *Survival Migration: Failed Governance and the Crisis of Displacement*. Cornell University Press.

## Crisis Migration Project

Some of the articles in this issue of FMR are based on products from the Institute for the Study of International Migration's Crisis Migration Project. The full list of the Project's outputs to date is as follows:

### **Setting the scene: migration implications of humanitarian crises**

Susan Martin, Sanjula Weerasinghe and Abbie Taylor\*

### **Conceptualizing 'crisis migration': a theoretical perspective**

Jane McAdam\*

### **Rising waters, broken lives: experience from Pakistan and Colombia floods suggests new approaches are needed**

Alice Thomas\*

### **Recurrent acute disasters, crisis migration: Haiti has had it all**

Elizabeth Ferris\*

### **Environmental processes, political conflict and migration: a Somali case study**

Anna Lindley\*

### **Environmental stress, displacement and the challenge of rights protection**

Roger Zetter and James Morrissey\*

### **Intractability and change in crisis migration: North Koreans in China and Burmese in Thailand**

W Courtland Robinson\*

### **Criminal violence, displacement, and migration in Mexico and Central America**

Sebastián Albuja\*

### **Chernobyl & Fukushima-Daiichi: consequences and lessons learned**

Silva Meybatyan

### **Health crises and migration**

Michael Edelstein, Khalid Koser and David L Heymann\*

### **Community relocations: the Arctic and South Pacific**

Robin Bronen\*

### **'Trapped' populations: controls on mobility at times of crises**

Michael Collyer and Richard Black\*

### **Protecting non-citizens in situations of conflict, violence, and disaster**

Khalid Koser\*

### **Human trafficking and smuggling in the time of humanitarian crises**

Elżbieta M Goździak and Alissa Walter

### **Flight to the cities: urban options and adaptations**

Patricia Weiss Fagen\*

### **Policy adrift: the challenge of mixed migration by sea**

Judith Kumin\*

### **Lessons learned from the development of the Guiding Principles on Internal Displacement**

Roberta Cohen

### **Enhancing adaptation options and managing human mobility in the context of climate change**

Koko Warner and Tamer Afifi\*

### **Disaster Law**

Stefanie Haumer

### **The Hyogo Framework, disaster risk reduction and mobility**

IOM with UNISDR

### **Crisis migration: Housing, Land and Property (HLP) rights: disaster, conflict and climate change**

Scott Leckie

### **Something old and something new: resettlement in the twenty-first century**

Anthony Oliver-Smith and Alex de Sherbinin\*

### **The global governance of crisis migration**

Alexander Betts\*

\* These papers appear in the volume *Humanitarian Crises and Migration: Causes, Consequences and Responses*, published by Routledge in May 2014.

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## New OAS Conventions protecting IDPs against racism and discrimination

Maria Beatriz Nogueira

**Two new Conventions approved in 2013 have the potential to offer greater protection to vulnerable groups, including IDPs, in the Americas.**

On 6th June 2013, the General Assembly of the Organization of American States (OAS) approved two new international legal instruments: the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (the Anti-Racism Convention) and the Inter-American Convention against all Forms of Discrimination and Intolerance (the Anti-Discrimination Convention). The latter is more comprehensive in the protection of vulnerable groups and presents innovative formulations that specifically benefit IDPs in the region.

There has been long-standing and extensive racism and racial discrimination against IDPs in the Americas. This has been documented over the last two decades in numerous ways, including in reports by OAS Special Rapporteurs, Representatives of the UN Secretary-General on Internally Displaced Persons Francis Deng and Walter Kälin,<sup>1</sup> and Human Rights Watch, and in conferences such as the 2004 Regional Seminar on Internal Displacement in the Americas<sup>2</sup>.

In 2011, the official Working Group on a proposed Inter-American Convention against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance had decided to split the draft into two different Conventions: one focusing on racism and the other on other forms of discrimination and intolerance. This decision was initially prompted by the recognition that some states would face difficulties in implementing a fully comprehensive Convention because of their domestic legal stance on the issue of sexual orientation and gender identity. Afterwards, however, the Working Group took the opportunity to make the Anti-Discrimination Convention a trailblazer – the first to explicitly acknowledge the surge in hate crimes based on sexual orientation and to prohibit discrimination based on these grounds.

According to the new Anti-Discrimination Convention:

*Discrimination shall mean any distinction, exclusion, restriction, or preference, in any area of public or private life, the purpose or effect of which is to nullify or curtail the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties.*

*Discrimination may be based on nationality; age; sex; sexual orientation; gender identity and expression; language; religion; cultural identity; political opinions or opinions of any kind; social origin; socioeconomic status; educational level; **migrant, refugee, repatriate, stateless or internally displaced status; disability; genetic trait; mental or physical health condition, including infectious-contagious condition and debilitating psychological condition; or any other condition.**<sup>3</sup> [emphasis added]*

No other treaty in international law has a more inclusive notion of the meaning and reach of the non-discrimination principle than the one presented by this Convention. Whereas other human rights treaties have had to rely on interpretations of the principle that have incrementally come to encompass the protection of certain groups, this OAS Convention has incorporated doctrinal and jurisprudential advances into its own definition.

IDPs are now included among the categories of persons most vulnerable to discrimination, with potentially greater chance now of success in claims against discriminatory practices. State obligations set forth in the Convention range from prevention, elimination and



punishment of all kinds of discriminatory practices to the adoption of specific legislation and implementation of public policies on equal treatment and opportunity. Of specific importance to IDPs, access to housing, employment, participation in professional organisations, education, training, social protection, economic activity and public services cannot be subject to any form of restriction or curtailment of rights on the basis of discrimination and intolerance.

The Anti-Discrimination Convention foresees judicial oversight by the Inter-American Court of Human Rights and, once the Convention has entered into force, an Inter-American Committee for the Prevention and Elimination of Racism, Racial Discrimination and All Forms of Discrimination and Intolerance will be established to monitor implementation of the Convention.

The Convention may also serve as an important instrument to facilitate durable solutions to internal displacement crises in the region. Even after voluntary return or local integration, IDPs may still face

discrimination through restrictions on access to public services and curtailment of rights related to employment, subsistence and political participation.<sup>4</sup> All of these forms of discrimination are expressly forbidden by the Convention. The Convention can also assist in situations of discrimination against IDPs who also belong to other vulnerable groups, such as those living with HIV.

Only two ratifications are needed for the Anti-Discrimination Convention to enter into force. As of September 2013, Argentina, Brazil, Ecuador and Uruguay had signed the Convention but none has yet ratified it.

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1. See [www.brookings.edu/about/projects/idp/un-mandate/francis-deng](http://www.brookings.edu/about/projects/idp/un-mandate/francis-deng) and [www.brookings.edu/about/projects/idp/un-mandate/walter-kalin](http://www.brookings.edu/about/projects/idp/un-mandate/walter-kalin)

2. [www.brookings.edu/fp/projects/idp/conferences/mexreport.pdf](http://www.brookings.edu/fp/projects/idp/conferences/mexreport.pdf)

3. Art 1. Full text at <http://tinyurl.com/OAS-Discrimination-Conv>

4. A/HRC/13/21/Add.4. Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, Walter Kalin: Framework for Durable Solutions for Internally Displaced Persons*, 29 December 2009.

## The potential role of a racial discrimination law in Myanmar

Nathan Willis

**Ethnic discrimination has long fuelled violence and displacement within Myanmar, especially in relation to people of Rohingya ethnicity who have been fleeing in their 'tens of thousands' in 2013 alone.**

Under Myanmar's new Constitutional framework, and with legislative reform in process, it seems timely to consider whether a specific racial discrimination law could help address the entrenched issue of ethnic discrimination – and thereby reduce ethnic tensions, violence and the displacement of so many people.<sup>1</sup>

Myanmar's Constitution (Article 348) states that: "The Union shall not discriminate [sic] any citizen of the Republic of the Union of

Myanmar, based on race, birth, religion, official position, status, culture, sex, and wealth."<sup>2</sup> The determination of citizenship is prescribed by law, currently by the Citizenship Law 1982 which recognises 135 ethnic groups as 'national races' but does not include Rohingya ethnicity within these, thus denying citizenship to members of this ethnic group. Non-recognition of citizenship, in light of Article 348, also denies protection against discrimination under the Constitution.

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The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>3</sup> provides for the promotion of “universal respect for and observance of human rights, and fundamental freedoms for all, without distinction as to race, sex, language or religion’ and, further, that “there is no justification for racial discrimination, in theory or in practice, anywhere.” The Convention requires States Parties to “take effective measures to review governmental, national and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.”

In recognition that no state is immune from racism, legislators need to take seriously the need to enshrine a legislative response. While in Australia racial tensions in relation to Australia’s indigenous people are not at the same level as those in Myanmar in relation to the Rohingya ethnic group, Australia’s policies in relation to its indigenous people have from time to time brought Australia, too, into disrepute. Australia ratified the ICERD in 1975 with the passage of its Racial Discrimination Act. While such legislation does not represent a panacea for racial discrimination, the legislation at least represents state recognition of a problem that demands a solution and the legislation has proven useful as a legal mechanism for redress where issues of racism arise.

In Myanmar, some have called for the Rule of Law and Tranquillity Committee (RLTC), chaired by Daw Aung San Suu Kyi,



A woman vents her frustration about living conditions and life in general since being forced to flee from her home in Set Yone Su ward, Rakhine state, during the violence in October 2012. She said people bearing weapons forced everyone in her village to flee before burning their homes and looting their possessions.

to consider the Citizenship Law issue. The Committee’s report of 31 July 2013 includes a recommendation that states “should aim to [sic] a kind of peace that allows people and ethnic nationalities live and work under protection of the law for security of their lives with peace of mind.”<sup>4</sup> It is possible that the Citizenship Law could be reformed, or indeed that the Constitution could be amended. It seems reasonable to suggest that the RLTC could also consider recommending, as a parallel development, the ratification of the ICERD through a Racial Discrimination Law. Further, amendments to the Myanmar Constitution may be required to provide the relevant authorities with the power to ratify international conventions.

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1. [www.trust.org/item/20130912101837-el6ym](http://www.trust.org/item/20130912101837-el6ym) See also *Forced Migration Review* issue 30 on ‘Burma’s displaced people’ [www.fmreview.org/burma](http://www.fmreview.org/burma) 2008
2. <http://tinyurl.com/Myanmar-Constitution-2008>
3. [www.refworld.org/docid/3a66b3940.html](http://www.refworld.org/docid/3a66b3940.html)
4. Rule of Law and Tranquillity Committee, Myanmar, ‘Report of the Rule of Law and Tranquillity Committee’ (31 July 2013).

## Translating global education standards to local contexts

Carine Allaf, Tzvetomira Laub and Arianna Sloat

**Global standards such as the Education in Emergencies Minimum Standards need to be applied locally and this requires a thoughtful and committed contextualisation process.**

The Inter-Agency Network for Education in Emergencies (INEE) Minimum Standards articulate the minimum level of educational quality and access in emergencies and express a commitment that all children, youth and adults have the right to safe, good quality and relevant education even in the most dire circumstances, including forced displacement.<sup>1</sup>

In practice, because the standards are written in generic terms they need to be contextualised in a given situation; it is about 'translating' and adapting global standards to make their content appropriate and meaningful to the given circumstances. For example, the global guidance on teacher-student ratio is that "enough teachers should be recruited to ensure an appropriate teacher-student ratio"; the appropriate teacher-student ratio for a refugee camp school may differ significantly between contexts of long-term displacement and schools in recently displaced communities.

Informal contextualisation can occur when users review, tailor, pick out sections and adapt the guidance for their particular needs. Formal contextualisation, however, is a collaborative group process to develop a set of contextualised standards that engages all education stakeholders in a given context. The outcome is then recorded and shared widely, making it available for all education colleagues to use in that context.

Such a consultative, collaborative process also helps build a strong community of practitioners and policymakers in the country and offers an opportunity to hear the hidden voices and perspectives from, for example, refugee or host community teachers and parents who may have previously

been excluded from similar activities. This approach may help empower affected populations to claim their right to education in emergencies and strengthen the accountability of duty bearers to meet their obligations.

### Sri Lanka and Ethiopia

In both Sri Lanka and Ethiopia, education practitioners from non-governmental organisations, UN agencies, policymakers from the Ministry of Education (MoE), and other government officials from geographically diverse regions of their countries attended two-day workshops in their capitals to draft national education standards through contextualising the INEE Minimum Standards. In Ethiopia in order to ensure that refugee issues were mainstreamed into the country-specific standards, the initial consultation held at the national level was followed by a second workshop in the refugee-hosting area of Dollo Ado in which refugee experts reviewed the draft standards through a refugee/IDP lens.

In both countries, the agenda and materials were developed in consultation with the host organisations (Save the Children in Sri Lanka and UNICEF and Save the Children in Ethiopia) to cater to local needs. Guidance on how to approach sensitive topics, such as tribal and ethnic conflict, was also incorporated.

Participants were divided into groups, each group with an MoE official, local representation and geographical diversity. Attention was also given to ensuring that gender, religion, ethnicity and language were equally represented. The groups worked on three or more standards each to cover the entire 19 Standards of the Minimum

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Standards Handbook over the course of two to three days. The small groups later reviewed each other's work and offered additional feedback and ideas to strengthen the content. Participants also drafted a list of practical ways that they would use the contextualised standards to inform and guide education policy and practice in their work.



INEE contextualisation workshop in Dollo Ado, Ethiopia, 2013.

The facilitators then compiled the work into one document, highlighting any outstanding issues, questions and content gaps. This first draft was shared with all the participants and with other educationalists located in the respective countries. Their comments and further guidance were incorporated in a final version of the local standards.

#### **Lessons from the contextualising process**

In general, participants appreciated the opportunity to sit at the same table with colleagues from across the country and especially with those from the MoE. The participants owned the contextualisation process and its contribution to their own education work. Securing government attendance and convening a diverse group of participants were applauded, as this will have a direct impact on the future level of adoption and usage of the standards in both countries. In Ethiopia, participation by a wide variety of stakeholders including strong participation by the Administration for Refugee and Returnee Affairs (ARRA) and colleagues from the Water, Sanitation and Hygiene and Protection Clusters helped to strengthen the content of the standards and to build bridges between the MoE, ARRA and the Education Cluster.

One positive outcome from the Sri Lanka workshop was the identification of the many official circulars and policies on education that could be used in and/or related to an emergency context. Sri Lanka does not have one specific education in emergency (EiE) policy or a policy that explicitly deals with EiE, and its draft New Education Policy neither explicitly nor implicitly deals with EiE. This was a recurrent and glaring gap throughout the workshop and the drafting of the contextualised standards.

In addition to identifying gaps in education policy, contextualisation exercises may also raise awareness of existing laws and policies that are applicable in an emergency context. In Ethiopia, for example, participants working in refugee response expressed a need to clarify whether and how government policies apply in refugee contexts. A final contextualised standards document may be able to provide such guidance to identify how existing education policy applies in various emergencies to better inform EiE initiatives.

Strong MoE participation from the onset through to the end of the process is essential as government representatives are the only

ones who can validate enquiries about existing circulars and local laws and their integration into the finalised document. Some participants learned about certain circulars and laws already in place and others (especially those from the MoE) were made aware of the nuanced difficulties of implementing these laws in the field.

In Sri Lanka, it was agreed that a follow-up workshop or virtual meeting should take place with all the participants within 6-12 months after launching the contextualised standards in order to see who has done what in disseminating and applying the standards, and to see what good practice and lessons learned have emerged.

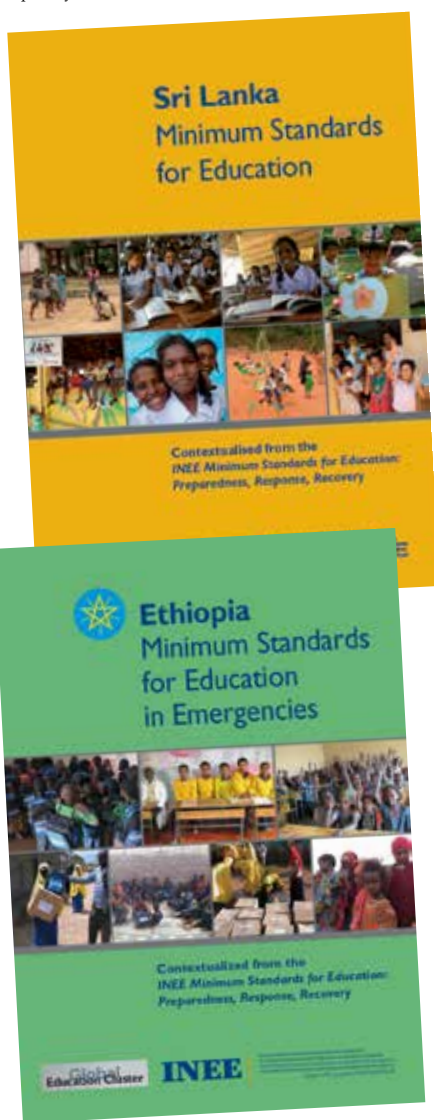
In Ethiopia, it was also suggested to develop a monitoring system on how the standards were being applied as a way of sharing knowledge, good practices and challenges.

For future contextualisations of humanitarian quality and accountability standards, the following points could be helpful:

- Ensure diverse participant representation in the contextualisation process (in terms of geographical location, expertise, organisation or government, etc).
- Endorsement and active involvement and/or leadership of the process by the relevant government Ministry are crucial.
- Link the contextualisation process to broader processes in the sector, eg sector planning.
- Invest time and effort in supporting the follow-up process by identifying 'champions' of the use of the standards in country and by holding face-to-face or virtual follow-up meetings to allow users to share good practice and learn from each other.
- Allow several months for the contextualisation process in order to give ample time for the group work and peer review process.

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1. <http://tinyurl.com/INEE-MinStandards>





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## Opportunity to change Lebanon's asylum policy

Samira Trad

"Lebanon is not a country of asylum" has been the official Lebanese cry for decades. Lebanon is not a signatory to the 1951 Refugee Convention and its 1967 Protocol, and lacks a comprehensive or adequate national refugee legal framework. Refugees and asylum seekers are treated as irregular migrants and are subject to arrest and deportation following prolonged arbitrary detention solely on grounds of lack of legal status. Refugees who do manage to enter Lebanon tend to live in urban areas in private lodgings and only Palestinian refugees live in camps. Non-Palestinian refugees or undocumented Palestinian refugees do not have their refugee status recognised by the Lebanese authorities.

Lebanon's standard justification includes that the country is small and for decades has hosted the largest Palestinian refugee population, who make up around 10% of its total population, and that as such it has taken more than its share of the international community's refugee 'burden'.

Yet today we see what is being referred to as the 'Syrian exception'. Syrians have been allowed safe admission, could not be detained for illegal entry and have received assistance and facilitation of assistance including for housing. Nevertheless Syrian refugees continue to be arrested for illegal entry or stay, albeit in very small numbers when

compared with the overall population of Syrian refugees in Lebanon. Deportation orders – sometimes solely for the 'crime' of illegal entry or stay – are, however, not being implemented and in practice the moratorium on deportation of Syrians appears to have been upheld by the Lebanese authorities.

However, this positive policy towards the Syrian refugees today has shown up shortcomings in the government's management and running of assistance and other protection related issues. It has brought to light the weakness and lack of preparedness of the Lebanese government to handle and manage refugee issues and to elaborate adequate programmes and procedure.

This experience should also raise awareness among Lebanese political decisionmakers and all stakeholders of the urgent need for the elaboration of a clear and consistent asylum policy in Lebanon. It is to be hoped that the attitude towards the 'Syrian exception' can be used as the starting point for such a policy to come into line with international refugee and human rights norms, standards and protection.

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UNHCR/M. Hofer

Syrian refugee women wait to register with UNHCR in the town of Arsal, Lebanon, 2013.

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## Perspectives of refugees in Dadaab on returning to Somalia

Caroline Abu Sa'Da and Sergio Bianchi

**MSF recently asked Somali refugees in Dadaab's Dagahaley camp about their living conditions and their thoughts about returning to Somalia in the near future. The responses suggest that bad living conditions in the camp are not conducive to wanting to return, despite a widespread belief to the contrary.**

Despite Kenya's generosity in hosting Somali refugees, their presence has recently been seen as problematic by the Kenyan authorities. In the wake of the 2011 Kenyan army offensive against Al-Shabaab in Somalia, Kenyan authorities began proposing the repatriation of Somali refugees. A Tripartite Agreement signed on 10 November 2013 by Kenya, Somalia and UNHCR outlines the practical and legal procedures for the voluntary return of hundreds of thousands of refugees to Somalia.

Médecins Sans Frontières (MSF) was present in the Kenyan camps between 1991, when they were established, and 2003. In 2013 it conducted a survey in its health facilities to highlight the living conditions and health issues experienced by refugees, as well as their views regarding possible repatriation to Somalia.<sup>1</sup>

The overall result was to show the extremely poor living conditions experienced by refugees, and especially by those who settled in the camp after 2011, when the violence and the nutritional impact of the drought in Somalia created huge increases in the numbers of Somali refugees. These living conditions appeared to be worse than the ones experienced by the refugees who arrived between 2007 and 2010, when growing insecurity (stemming from confrontation between Al-Shabaab and Ethiopian and Somali troops) and burgeoning drought conditions in Somalia triggered new waves of displacement. They also appeared to be worse than the conditions of those who arrived before 2006, when the camps were more or less stabilised.

### Living conditions and health status

Although Dagahaley (Dadaab) was initially planned to hold 30,000 people, they currently host 100,776 people and the consequences of overcrowding in terms of shelter, water, sanitation and living conditions are naturally problematic.



MSF/Kenneth Leveille

Refugee shelters in the Bulu Bachte area of Dagahaley, where new arrivals settled during 2011.

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The survey showed that the later refugees arrived in Dagahaley, the more likely it was that their housing unit would not offer adequate protection against the rain. The reasons for this difference are likely to be rooted in the diverse settling processes of Dagahaley refugees. Late arrivals are more frequently settled in housing units built with scavenged material rather than shelters made of UNHCR-provided raw material, with the latter offering more protection against rain than the former.

A higher percentage of those who arrived after 2011 also lacked access to water and latrines, probably because most post-2011 arrivals settled on the edges of the land granted to UNHCR. These areas lacked (and still lack) essential infrastructure such as latrines and boreholes. Similarly, access to water is also uneven across the camp, with later arrivals similarly disadvantaged, meaning that the same groups were likely to have not only poor shelter but also poor access to water and sanitation.

In addition, the proportion of respondents asserting that they had enough food was lower among those who arrived after 2011 compared to those who arrived before 2006 and between 2007 and 2010. Finally, self-declared health status appears to be significantly related to the time of arrival in Dagahaley, since the percentage of interviewees reporting themselves to be in 'average' or 'bad' health was higher among those who arrived in 2011 than among the pre-2010 arrivals. This perception is consistent with the aggregated medical data reported by both MSF teams in the field and survey respondents. But how does this reality affect the intentions of the refugees to return?

### Intention to return

Overall, there is a negative correlation between the extremely poor conditions and the intention to return; counter-intuitively, experiencing bad living conditions appears to weaken, rather than reinforce, the intention to leave the camp and return to Somalia. Only 20% of respondents declared

they were ready to go back to Somalia under present conditions in Somalia. The intention to return related to a number of factors and it appeared more frequently among refugees experiencing better living conditions in terms of security and access to water and latrines than among those worse off.

Among those feeling safe, 21% were willing to return, while only 14% of those not feeling safe were. Similarly, 21% of those with access to latrines and 20% of those with access to water were willing to return, and only 8% of those without access to latrines and 13% of those without access to water were willing to return.<sup>2</sup>

Looked at from the point of view of the refugees, the correlation between better living conditions and the willingness to return appears sensible. Dagahaley inhabitants weakened by lack of access to essential services such as food, water and health care are likely not to have the material and inner resources allowing them to return to Somalia. On the other hand, refugees who are 'well-off' in terms of assistance may at least consider travelling home.

This consideration is naturally only one among several that residents in the camp will be taking into account but nevertheless these figures invite one main conclusion: that the worse off the refugees are, the less likely they are to repatriate voluntarily.

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The assessment upon which this article is based is available upon request from the authors.

1. In the first two weeks of August 2013, 1,009 adult patients and patients' carers were interviewed.
2. The Chi-Square test with a confidence interval of 95% was used to verify the existence of statistically significant relationships.

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## Dictatorships, refugees and reparation in the Southern Cone of Latin America

Juan Pablo Terminiello

**Since the return of democracy to Argentina, Bolivia, Chile, Paraguay and Uruguay there has been particular recognition of forced displacement within the framework of reparations for the abuses suffered under dictatorial governments.**

The 1970s and a large part of the 1980s saw the countries of the Southern Cone of Latin America<sup>1</sup> governed by civil-military dictatorships. Inspired by the doctrine of national security, these governments implemented systematic plans for the violation of human rights with the aim of erasing all opposition to their authoritarian practices and imposing their political and socio-economic models.

‘Exile’ is the usual term used for the displacement of thousands of Latin American people forced to flee to other countries of the region and other parts of the world, although no definitive statistics are available on the number of individuals exiled as a consequence of the repressive actions of the authoritarian governments.

Forced displacement was not merely a consequence of the repressive actions of military governments; displacement in some cases became a component of the strategies of repression implemented by the dictatorships. For example, in Chile, the military dictatorship headed by Augusto Pinochet enacted a number of regulations to force the displacement of members of the opposition and to thus redraw the political map of the country. A decree granting discretion to expel citizens from December 1973 allowed all of the detainees being held but who had not yet been tried to apply for release conditional on their immediate expulsion from the country. A law of 1974 then granted the dictatorship the authority to refuse re-entry of Chilean citizens to the country. The application of these decrees forced thousands of Chileans to abandon their country – and prevented their return.

### Reparations

The return to democracy and the re-establishment of constitutional governments confronted the countries of the Southern Cone with the need to implement complex processes of transitional justice to deal with the serious human rights abuses committed by the dictatorships. These countries have been pioneers in implementing a variety of political and legal approaches and strategies to deal with their recent history of human rights violations. The trial and punishment of perpetrators, the establishment of truth commissions and the adoption of regulations to permit amnesty or pardon for perpetrators form part of the complex range of options applied by the countries of the region to deal with their recent past of human rights abuses.

Recognition by the state of the abuses and the establishment of reparations for the victims – either monetary or in terms of assistance – were also part of the transitional justice processes implemented in these countries. These reparations have mainly been for individuals who were illegitimately deprived of their liberty and/or were tortured or were for the families of those who were assassinated or who were ‘disappeared’. Exile,



The 'Platform of Advocates Against Impunity and Bolivian Dictatorship Survivors' demands the recognition of dictatorship years, and an end to impunity for human rights abuses.

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however, has so far received relatively less attention from those establishing mechanisms for reparations, and less attention still has been given to the punishment of those responsible for imposing exile.

In Bolivia and Uruguay, exile had been explicitly taken into account in the recognition of state responsibility for human rights violations. In the cases of Argentina, Chile and Paraguay, forced displacement as a form of human rights violation was not initially expressly recognised in the laws for reparations, and only later declarations or judicial rulings recognised it as a human rights violation, leading to, or at least suggesting, measures for reparations.

In Bolivia, the law of compensation expressly established “exile and banishment” as one of the factors deserving compensation. However, the same law made granting of reparations to exiles conditional on them providing proof that they had been deprived of their liberty and had suffered persecution. The necessity to provide proof has frustrated the right to reparations of many former Bolivian refugees.

In the case of Uruguay, Law N° 18.596 (October 2009) recognises state responsibility for the infringement of the rights of those individuals

who were forced to leave the country due to political, ideological or trades union-related causes. It does not set any economic compensation for their time in exile, although Law N° 17.449 (January 2002) had established the time in exile as “effectively worked” in calculations for retirement and pension benefits. This has allowed many

Uruguayan former refugees to receive a retirement payment or old-age pension.

Victim compensation laws in Paraguay did not consider exile or the forced displacement of individuals within the class of violation considered eligible for compensation. However, the report produced by the Paraguay Truth and Justice Commission in 2008 recognised exile as one of the human rights violations perpetrated during the dictatorship and stressed that it affects not only the rights of the subjects of forced displacement but also those of their families. It also indicated that the transitional governments had failed to encourage the return of exiles through the creation of social and political conditions that would have favoured their reinsertion. In spite of the return to democracy, those Paraguayans residents abroad continued to be prevented from participating in elections in their country for many years, and they faced obstacles in conferring their nationality on children born abroad. In the case of Paraguay, there was no economic compensation for exiles, nor were there any other measures even as symbolic reparations.

In Chile, the state adopted a series of laws in favour of those persons who had suffered exile, including one to facilitate the return of exiled Chilean men and women, through the adoption of measures related to re-entry into the labour market, health care, education, housing, legal aid and international cooperation to ensure the continuity of pension payments. However, the reality is that there was no specific legislation establishing economic compensation for those people who had been forced into exile.

Under Argentine law, exile was not initially considered grounds for economic reparations but a decision by the Supreme Court in 2004 ruled in favour of extending the economic benefits of the law for the compensation of persons illegitimately deprived of their liberty to a family that had been forced into exile. That ruling encouraged thousands of exiled individuals to present claims for compensation.



of Justice and Historical Memory of reparations promised to survivors of the loss to military documents from the human rights violations. 2012.



## Conclusion

The transitional justice processes in the region have played, and continue to play, a determining role in the reinforcement of democracy and in preventing a repeat of the human rights violations committed in periods of dictatorship. The exposure of forced displacement as a human rights abuse and the recognition of state responsibility constitute important steps toward the prevention of forced displacement in the future. However, significant difficulties remain in ensuring that those people who experienced exile receive adequate and

comprehensive reparations for the damage caused to them. Lastly, legal strategies still need to be defined in order for the forced displacement of the population to be officially recognised as one of the abuses for which those responsible for human rights violations must be made to answer before the law.

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1. The southernmost part of South America, approximately south of the Tropic of Capricorn.

## Internal displacement in Kenya: the quest for durable solutions

Lucy Kiama and Fredrick Koome

**Internal displacement in Kenya has been a challenge since the colonial era but only recently has a legal framework been developed to address IDP protection issues. The process of developing this framework offers some useful lessons for stakeholders in similar situations.**

Displacement in Kenya can be traced to a variety of sources which have forced Kenyans to move away from their habitual places of residence in search of safety: the colonial thirst for land, the punishing effects of global warming, development-related displacement, clan clashes, cattle rustling and politically motivated violence. Historically, mass displacement of Kenyans can be argued to have started in 1915 when the British colonial power stipulated that all land belonged to the monarch to be held in trust by the governor. Many of the indigenous population were rendered landless and forced to work for European-owned farms.

It is with this background that the ethnic clashes of 1992 and 1997 should be understood. For instance, the violence witnessed in 1992 was as a result of the re-introduction of multiparty politics. Some politicians took advantage of discontent over land distribution and, hoping to deny their rivals a support base in 'their' electoral area, stoked ethnic flames of hatred which caused thousands of Kenyans

to be evicted from what they had hitherto called home, some since independence in 1963. In the post-election violence of 2007-08 the same issue of redistribution of resources, especially land, was a significant factor. In addition there have been mass displacements caused by natural and human-made disasters. Floods have destroyed homes and livelihoods in various locations in Kenya; early in 2013, for example, heavy rains in most parts of the country displaced an estimated 18,000 people.<sup>1</sup>

Moreover, there are the clan/ethnic skirmishes – which at times are politically motivated – that perennially occur in some parts of Kenya. One community rises against another and that then leads to a revenge mission by those attacked, culminating in a vicious cycle of violence resulting in injuries, deaths and mass displacements.

Notwithstanding all these instances of displacement, Kenya did not have a coherent and comprehensive legal or policy framework to address the problem of internal

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displacement. There were numerous laws that could be used to address the problem of displacement but none of these directly focused on the protection of and provision of assistance to IDPs and affected communities. The government's response to displacement was ad hoc and reactive. For instance, during the 2007-08 post-election violence, the government launched Operation Rudi Nyumbani ('return home' campaign) and offered *ex gratia* [goodwill] payments to those affected. Although this quick intervention by the government helped to alleviate the immediate situation, it took no account of the need for durable solutions for IDPs as envisaged by the UN Guiding Principles or the Kampala Convention.<sup>2</sup> This is where international NGOs and local civil society organisations (CSOs) stepped in to fill the gap to champion the need for a rights-based approach to providing protection and assistance to IDPs and affected communities.

#### Development of policy and legal framework

The process of developing a legal framework on protection of IDPs began in earnest in 2009 when durable solutions and the establishment of a policy framework for IDPs were discussed at a meeting of stakeholders (including INGOs, CSOs, relevant government ministries, UN agencies, Kenya National Commission on Human Rights and IDP community representatives). A protection working group on internal displacement was formed with a mandate to enhance the capacity of actors to address the protection needs of IDPs throughout Kenya. This involved, among other things, capacity building for government actors on the UN Guiding Principles, lobbying, and developing an IDP legal and policy framework.

The protection working group set up a legal aid sub-working group to explore the gaps in the law in respect of protection of IDPs and to draft key provisions of an IDP policy. Following a national stakeholders' review forum in March 2010 the policy was finalised in partnership with the Ministry of State for Special Programmes<sup>3</sup>. Meanwhile a Parliamentary Select Committee on



Kibera slum, Nairobi, home to thousands of IDPs.

Resettlement of IDPs (PSC) worked on the legislative aspects of IDP protection, which provided an opportunity for the protection working group to engage with the legislators in crafting the first ever legal instrument in Kenya concerned with IDP protection.

The protection working group then decided to further influence the process by merging the processes of policy and legislative formulation. The Refugee Consortium of Kenya (RCK), as the chair of the protection working group's advocacy sub-group, convened a workshop for the PSC at which it was agreed that the advocacy sub-group would review the draft Bill that the PSC had developed. At the subsequent presentation of the draft Bill for validation in December 2011, the participation of the Minister of Special Programmes provided a strategic opportunity for the protection working group members to lobby in support of the Bill, and advocate for the fast tracking of the adoption of the IDP policy (which would set out objectives and implementation methods, within the new legal framework). The effect was evident when the Minister not only supported the Bill during its debate in the National Assembly but also introduced crucial amendments such as the creation of a state-funded humanitarian fund to assist IDPs.

RCK then organised a sensitisation workshop to ensure that members of the labour and social welfare committee appreciated the importance of the Bill. This was done to great effect as the Bill was passed in the National Assembly and given Presidential assent on 31st December 2012 despite a busy schedule on the legislative calendar. The IDP policy is yet to be adopted<sup>4</sup> but the members of the protection working group are now lobbying the newly restructured Directorate of Special Programmes to present the draft policy in Parliament for debate.

### Lessons from the process

The first lesson worth noting is that some government stakeholders need capacity building. Many actors outside government assume that those charged with making policy have the requisite tools to do their task but this may not always be the case.

There is also a need to identify local actors and establish a framework to coordinate their activities. The achievements in Kenya would not have been possible had it not been for the concerted and coordinated efforts of CSOs and INGOs. Numerous meetings under the aegis of the protection working group proved indispensable in organising activities for the lobbying of the enactment of the IDP Act and development of the IDP Policy.

Government involvement in the process of policy development is crucial. This was seen through the engagement with the Ministry of State for Special Programmes which proved instrumental in the passing of the IDP Act. A corollary of this involvement was the building and utilisation of crucial contacts which are still being used in efforts to get the IDP policy adopted by government.

At the same time, there needs to be comprehensive inclusion and participation of all stakeholders including the IDPs who are the beneficiaries of the legal framework – which was in fact lacking in the Kenyan experience. The result of this participation will be an outcome that is owned by all those

involved, leading to greater support in the implementation phase of both law and policy.

Sufficient resources must be mobilised. Through it all, the need to have resources (in terms of funds as well as staffing) for capacity building, training and lobbying presented a challenge particularly to those CSOs that had not foreseen impromptu activities in their annual plans. A lot of resources are needed in influencing policy and law.

Timing was a major issue. From the time of independence until the 2007-08 post-election violence there had never been an emergency of such proportions to warrant a debate on internal displacement; the post-election violence had devastating effects on the Kenyan populace but did provide an opportunity to review the current laws and propose policy and legislative processes to address the issue.

### Conclusion

The Kenyan experience of finding durable solutions for internal displacement has been marked by both successes and challenges. The main success has been the passage of the IDP Act which has been enacted despite the delay in adoption of the policy. Enactment of this legislation, however, is a very positive step towards anchoring prevention of internal displacement and protection of IDPs within a comprehensive policy platform. This has also made Kenya one of the few countries within the region to have domestic laws on internal displacement.

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1. IDMC IDP News Alert 18 April 2013

<http://tinyurl.com/IDMC-Kenya-news-13-4-13>

2. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa

<http://tinyurl.com/AU-KampalaConvention>

3. The government ministry that was in charge of IDP protection at the time.

4. The delay in it being tabled for debate is due to the change of government in Kenya, as various ministries have been restructured.

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## Connecting and communicating after Typhoon Haiyan

Mariko Hall and Adam Ashcroft

**In the first month of the Typhoon Haiyan response, one of the priorities facing the international community was to re-establish internet connectivity in order to facilitate information sharing and the provision of assistance.**

“The main challenges we face in these kinds of situations, especially with the typhoons and the tidal surge that they had here, is the damage to the infrastructure,” says Neil Murphy-Dewar, Emergency Telecommunications Cluster (ETC) Team Leader in Tacloban. “In Tacloban the electricity infrastructure was totally destroyed, the mobile phone networks were brought down, and the landline telephone networks and the internet service providers were all severely damaged.”

The ETC is a global network of organisations that work together to provide information technology and telecommunications to the humanitarian community. Through a pre-existing partnership, the Luxembourg Directorate for Development Cooperation’s ‘emergency.lu’ telecommunications platform was deployed alongside technologies from Ericsson Response and the World

Food Programme to support the ETC by providing essential communications to the relief community within days.

According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), 14.1 million people across the Visayas region of the Philippines were affected by Typhoon Haiyan. Over one million houses were destroyed, 6,109 people were reported dead and 4.1 million were displaced. Due to the scale of devastation, all the humanitarian response Clusters were activated.

The town of Guiuan, in the province of Eastern Samar, was Typhoon Haiyan’s first point of impact in the Philippines. Even before the disaster, internet connectivity was very limited. After some initial technical issues due to high humidity and difficulty in identifying a suitable location among widespread rubble, the ETC was able to establish Wi-Fi internet



Some 8,000 displaced persons have been living in the Tacloban Astrodome, the city’s largest sports complex.

connectivity services for the humanitarian community using the emergency.lu Regular Deployment Kit. The Water, Sanitation and Hygiene (WASH) Cluster has been distributing blankets, hygiene kits and water purifiers, educating Guiuan's residents on good hygiene and working with local government to strengthen long-term WASH capacity. "At first, communicating was very difficult," says Prem Chand, WASH Cluster Coordinator from UNICEF. "Phones were useless. We had daily meetings but when the ETC started providing internet, frankly, it was the only communication with the outside world we had."

In Tacloban City, hardest-hit by the typhoon, the priority was to provide connectivity to the Town Hall and the Tacloban stadium (evacuation centre and focus for coordination of relief efforts). A second emergency.lu Rapid Deployment Kit was installed in Ormoc City, on the roof of the City Hall, to

provide free internet and voice services to the humanitarian community there, with a small internet café at the City Hall.

"Today the ability to be on the internet and be able to share information with headquarters is essential," says Jesper Lund, Head of OCHA in Leyte and Samar. "Everything we produce here is immediately uploaded to the internet so it is available to the wider community. We cannot imagine a situation any more where we don't have internet access."

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1. within the Ministry of Foreign and European Affairs

### "This is 98.7 FM, First Response Radio broadcasting live in Tacloban city."

All of Tacloban's 15 radio stations were knocked off the air when Typhoon Haiyan devastated the Philippine city with 220,000 inhabitants. A response within 72 hours by volunteers managed to get an emergency station on the air, the only local mass medium for survivors to get reliable information.

Launched on 14 November 2013, First Response Radio (FRR) broadcast daily programmes that could be heard up to 10km from Tacloban. The first day's programming focused on updating listeners on where to get help, the location of evacuation centres and water points, and which authorities were organising aid. FRR initially distributed solar-powered and wind-up radios to evacuation centres and local government offices, where broadcasts were amplified by loudspeakers to reach a larger audience, followed later by wider distribution of radios to the affected areas.

In the immediate aftermath of the typhoon, survivors had urgent need for information about available services and aid, and support in finding ways to communicate with each other. A dearth of information in emergencies contributes to "[creating] confusion and insecurity", notes the Inter-Agency Standing Committee's Guidelines on Mental Health and Psychosocial Support in Emergency Settings<sup>1</sup>.

"People's levels of anxiety and stress can be significantly affected by not having information or by having misinformation," said Krista Senden, a psychosocial counsellor who provides therapy for displaced persons in emergency situations. Information is central to coping with a disaster and allowing people to regain a sense of control over their lives – key to both understanding chaotic situations and being able to cope with displacement and loss.

The international humanitarian system has made specific commitments to improve accountability to affected populations, particularly since the Haiti earthquake, through greater transparency, adequate information provision and two-way communication, and the facilitation of feedback and complaints. It is now one of the five priority focus areas for the Inter-Agency Standing Committee at the global level.

Information drawn from IRIN News <http://tinyurl.com/IRIN-99132> and 'Response to Typhoon Haiyan (Yolanda) 17 December 2013', Communications with Communities (CwC) Working Group <https://philippines.humanitarianresponse.info>

1. <http://tinyurl.com/IASC-MHPs-guidelines>



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## Global Forum on Statelessness: New Directions in Statelessness Research and Policy

15-17 September 2014

The first global forum on statelessness will take place in The Hague, the Netherlands, in September 2014, the year of the 60th anniversary of the adoption of the 1954 Convention relating to the Status of Stateless Persons. The three-day event is co-hosted by UNHCR and the Statelessness Programme of Tilburg University, and is aimed at UN staff, government representatives, academics, NGO staff, legal practitioners, and stateless and formerly stateless people.

The programme will comprise both plenary and workshop sessions, around three sub-themes: Stateless Children, Statelessness and Security, and Responses to Statelessness. The aims of the conference are to:

- Share good practices and challenges in policy development on statelessness
- Explore and debate contemporary statelessness research and policy

- Encourage new research on statelessness across and between a range of academic disciplines
- Provide a platform for the voices of stateless persons in the development of new research and policy directions
- Strengthen existing partnerships and build new networks among different stakeholders engaged on statelessness

For more details, including a list of confirmed speakers, or to register, please visit <http://tinyurl.com/Tilburg-Statelessness-Forum> Early bird fee if registering on or before 15<sup>th</sup> March 2014.

The next issue of **Forced Migration Review** will also be carrying a mini-feature on statelessness in connection with the Forum and updating the statelessness-themed issue of FMR that came out in 2009 [www.fmrreview.org/statelessness](http://www.fmrreview.org/statelessness).



## Humanitarian Innovation Conference

19-20 July 2014: Keble College, Oxford

Seeking to draw upon ideas traditionally used in the private sector to improve the responses in emergencies, protracted crisis and post-conflict recovery, humanitarians have turned to innovation for solutions to critical challenges in the field. Current debate has begun to document examples of ad hoc innovation in practice; however, there is a need to develop a common language and greater conceptual clarity as a starting point for moving forward. This conference, organised by the Humanitarian Innovation Project at the Refugee Studies Centre, will provide a platform for discussion and debate in order to further define the agenda for humanitarian innovation. Participants will include actors from UN agencies, NGOs, academia and both the public and private sectors.

Discussions will focus on five core themes: Definitions and frameworks for humanitarian innovation; Improving organisational responses; 'Bottom-up' approaches to innovation; New directions within humanitarian work; and Critical approaches to humanitarian innovation.

For more information please visit [www.oxhip.org/2013/10/hip2014/](http://www.oxhip.org/2013/10/hip2014/) or email [hiproject@qeh.ox.ac.uk](mailto:hiproject@qeh.ox.ac.uk) To register online visit <http://tinyurl.com/HIP-2014-registration>

## Forced Migration Review supplement on 'Refugees and innovation'

The FMR Editors will collaborate with the Humanitarian Innovation Project team in preparing a 20-page supplement focusing on 'refugees and innovation' to be published in August 2014. This will contain articles relating to key aspects of the team's research, additional articles drawn from a range of external actors (UN, NGOs, refugee communities) on different aspects of the supplement theme, and outcomes of the July 2014 conference. The supplement will include discussion of the potential practical application of innovation research in the context of the current Syria crisis, and will be published in English and Arabic.

### Refugee Voices : RSC International Conference 24-25 March 2014, Oxford

Refugee Voices will bring together scholars from across the social sciences and researchers in cultural studies, literature and the humanities to look beyond the nation state and international relations in order to give new attention to the voices and aspirations of refugees and other forced migrants themselves. Among the themes to be explored are historical and cultural sources and meanings of flight, exile and forced migration, as well as the significance of encampment, enclosures and forced settlement. Registration opens on 7th February 2014.

[www.rsc.ox.ac.uk/events/refugee-voices](http://www.rsc.ox.ac.uk/events/refugee-voices)

### International Summer School in Forced Migration

7-25 July 2014, Oxford

The three-week Summer School fosters dialogue between academics, practitioners and policymakers working to improve the situation of refugees and forced migration. It offers an intensive, interdisciplinary and participative approach to the study of forced migration, enabling people working with refugees and other forced migrants to reflect critically on the forces and institutions that dominate the world of the displaced.

**Summer School bursaries:** Asfari Foundation and MENA bursaries are available for Summer School candidates who work on refugee-related issues from Palestine, Lebanon and Syria (or Palestinians and Syrians resident in the Arab world). Candidates must apply directly to the International Summer School office (NOT the Asfari Foundation). Deadline for Asfari Foundation or MENA bursary application is 1st March 2014. Other bursary funding is also available to nationals of the global South. For further information, please visit [www.rsc.ox.ac.uk/study/international-summer-school](http://www.rsc.ox.ac.uk/study/international-summer-school)

### Statelessness and International Law 17-18 May 2014, Oxford

Convened by Dr Cathryn Costello (RSC) with Mark Manly (UNHCR).

This two-day non-residential course will be presented by some of the leading experts on this issue, including Professor Guy Goodwin-Gill, Professor Matthew Gibney and Dr Laura van Waas. It will cover various thematic areas, including an overview of the problem of statelessness in today's world; the politics and ethics of statelessness; the international legal framework governing statelessness; and UNHCR's statelessness work.

[www.rsc.ox.ac.uk/study/short-courses/statelessness](http://www.rsc.ox.ac.uk/study/short-courses/statelessness)

### Health and Humanitarian Responses in Complex Emergencies

17-18 May 2014, Oxford

Convened by Professor Dawn Chatty (RSC). Taught by Dr Paul Kadetz (Leiden University College) and Dr Holly Scheib (Global Consulting Services for Sage Consulting Incorporated).

This two-day non-residential course will present critical examination of the normative frameworks for humanitarian responses in addressing the health and well-being of populations in complex emergencies. Alternative approaches to complex emergencies will also be presented and assessed. [www.rsc.ox.ac.uk/study/short-courses/health-and-humanitarian-responses](http://www.rsc.ox.ac.uk/study/short-courses/health-and-humanitarian-responses)

### New Working Papers

[www.rsc.ox.ac.uk/publications](http://www.rsc.ox.ac.uk/publications)

**'Future citizens of the world'? The contested futures of independent young migrants in Europe**, by Elaine Chase and Jennifer Allsopp, November 2013

**Civitas, polis, and urbs: reimagining the refugee camp as the city**, by Peter Grbac, November 2013

**Refugee livelihoods in Kampala, Nakivale and Kyangwali refugee settlements: patterns of engagement with the private sector**, by Naohiko Omata and Josiah Kaplan, October 2013

### New RSC podcasts [www.rsc.ox.ac.uk/news](http://www.rsc.ox.ac.uk/news)

**At the end of the rainbow: where next for the LGBTI refugee?** S Chelvan (No5 Chambers), January 2014

**The global governance of international migration: what next?** Panel discussion with Dr Cathryn Costello (RSC), December 2013

**The price of rights: regulating international migration** Dr Martin Ruhs (COMPAS), December 2013

**Annual Harrell-Bond Lecture: Refugee rights: beyond the 1951 Convention**, Professor Yakin Ertürk (former UN Special Rapporteur on Violence Against Women), November 2013

### Oxford Monitor of Forced Migration

Call for Papers for Vol 4, No 1

'OxMo' is a student journal (established by RSC Master's students) dedicated to protecting and advancing the human rights of refugees and forced migrants. OxMo welcomes article submissions from current students or recent graduates of any discipline writing on issues related to forced migration. Submissions can be made to the Academic Articles section; Policy, Law or Field Monitors; or First Hand narratives. For more information, visit <http://oxmofm.com>

February 2014

## Forthcoming issues of FMR [www.fmreview.org/forthcoming](http://www.fmreview.org/forthcoming)

### Afghanistan's displaced people: 2014 and beyond (FMR 46)

Due out May 2014 - to be published in English, Arabic, French, Spanish, Dari and Pashto. Call for articles closed but details at [www.fmreview.org/afghanistan](http://www.fmreview.org/afghanistan)

### The Syria crisis, displacement and protection (FMR 47)

Due out August 2014.  
Deadline for submissions: 19th May 2014.  
With no obvious sign that the crisis inside Syria will die down in a manner or time that is predictable, it is too soon to be definitive in offering prescriptions for responses or solutions. However, a pattern of needs, lacks and problems has already emerged and it is not too early to offer observations that could be of value in increasing the level of protection for the displaced and in shaping assistance to both the displaced and the countries and communities that are 'hosting' them. The FMR editors are looking for practice-oriented submissions focusing on the Syria crisis, specifically on questions of costs and impacts, and on protection for people displaced by the Syrian crisis.  
Call for articles online at [www.fmreview.org/syria](http://www.fmreview.org/syria)

### Faith-based organisations and responses to displacement (FMR 48)

Due out November 2014 (note change of date).  
Deadline for submissions: 9th May 2014.

Individuals and organisations inspired by their faith or religion to assist people in need have long played important roles in humanitarian assistance. There is little written for a wide audience, however, about actual experiences and how communities and organisations deal with the interfaces between faiths and rights, protection, needs and assistance. This issue of FMR will complement on-going research at the Refugee Studies Centre and various initiatives within the international humanitarian community, including the Joint Learning Initiative on Faith and Local Communities and the Affirmations for Faith Leaders launched in June 2013.

Call for articles online at [www.fmreview.org/faith](http://www.fmreview.org/faith)

### Climate change, displacement and the Nansen Initiative (FMR 49)

Due out May 2015.

### Dayton +20: twenty years on from the Dayton Agreement in the Balkans (FMR 50)

Due out October 2015.

For more information see [www.fmreview.org/balkans](http://www.fmreview.org/balkans)

### Thank you to all FMR's donors in 2013-2014

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Arcus Foundation • Danish Refugee Council • DHL • ISIM, Georgetown University • Lex Justi • Luxembourg Ministry of Foreign Affairs • John D and Catherine T MacArthur Foundation • Mohammed Abu-Risha • Norwegian Ministry of Foreign Affairs • Norwegian Refugee Council/Internal Displacement Monitoring Centre • Oak Foundation • Oxfam • Refugees International • Swiss Federal Department of Foreign Affairs • UNDP Evaluation Office • UNHCR • UNOCHA • US Dept of State's Bureau of Population, Refugees, and Migration • Women's Refugee Commission

We would also like to thank all those who have supported the production and dissemination of FMR by making individual donations through our online giving site at [www.fmreview.org/online-giving](http://www.fmreview.org/online-giving)

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# Forced Migration Review 25th Anniversary collection

The FMR 25th Anniversary collection of articles, now gathered into one pdf and online at [www.fmreview.org/25th-anniversary](http://www.fmreview.org/25th-anniversary), looks back over 25 years of debate, learning and advocacy for the rights of displaced and stateless people, and considers where we are now in relation to some of the themes covered in FMR.

We invited a selection of former guest editors, authors and donors to write on developments, lessons, challenges, gaps – and their thoughts about the future for displaced people and our sector. The contributions to the collection are:



## From the current editors in 2012

Marion Couldrey and Maurice Herson



## 25 years of forced migration

Jeff Crisp



## Humanitarian action: a victim of its own success?

Antonio Donini



## Refugees and displaced persons with disabilities – from 'forgotten' to 'vulnerable' to 'valuable'

Emma Pearce



## Collapsing societies and forced migration

Johan Kristian Meyer



## Meaningful change or business as usual? Reproductive health in humanitarian settings

Samantha Guy



## 20 years of internal displacement in Georgia: the international and the personal

Julia Kharashvili



## Accountability – a long but necessary journey

Andreas Kamm



## The logistics of the last mile

George Fenton



## Asylum space in Kenya: evolution of refugee protection over 20 years

Lucy Kiama and Rufus Karanja



## Internally Displaced Persons 1998-2013

Khalid Koser



## Change and continuity in displacement and response

Rachel Hastie

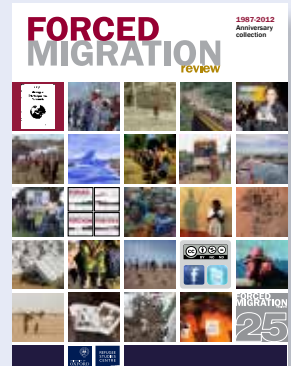


## What's in a name?

Erin Mooney

This collection is available in English online but is not available in print. Please feel free to print off your own copy from our website at [www.fmreview.org/25th-anniversary](http://www.fmreview.org/25th-anniversary).

We would like to pay tribute to Barbara Harrell-Bond and Belinda Allan of the Refugee Studies Centre (then 'Programme') who recognised the potential for such a forum and secured the funding that got it up and running. And we would like to thank all those who have read it, used it, written for it, advised the editors, funded it and distributed it over the years.



[fmreview.org/crisis](http://fmreview.org/crisis)