

Research Report

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Third responsibility of member states to
protect the rights of forced migrants,
especially those displaced by conflict
situations

MUNISH



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Forum	GA3: Social, Humanitarian & Cultural
Issue:	The responsibility of member states to protect the rights of forced migrants, especially those displaced by conflict situations
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Introduction

Granting asylum to people fleeing from persecution in foreign lands is one of the earliest marks of civilization. References have been found in texts written approximately 3500 years ago; Hittites, Babylonians, Assyrians and ancient Egyptians, all great early civilizations in the Middle East, recognized the need to protect refugees.

One of today's major international challenges, forced migration lies today at the heart of the fundamental concepts of humanity and equality. The always-rising numbers of forced migrants in the world present a huge challenge for humanitarian actors: today, more than 73 million people are forced migrants, compelled to move in search of safety and stability, displaced by conflict, political upheaval, violence and disasters but also by climate change and development projects.

The number of forced migrant is shocking enough, but it's the human cost that requires immediate attention and urgent solutions: destroyed livelihoods, increased vulnerability especially of women and children, lost homelands and histories, fractured households and disempowered communities, and the destruction of the common bonds and shared values of humanity. Add to this the fact that they are rarely welcomed with open arms in the hosting countries, especially if the native populations already suffer from economic and social troubles, and the situation becomes critical.

It's a fact that over the last 40 years or so, the humanitarian response to these conditions has enormously expanded, and yet, enormous challenges remain.

Definition of Key Terms

Forced migration

This phenomenon refers to the movements of refugees and internally displaced people – those displaced by conflicts – (IDPs) as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects.

Conflict situation

A situation of disagreement between parties involved where they perceive a threat to their needs, interests or concerns.

Livelihood

Assets allowing individuals or communities to meet their basic short- and longer-term needs. These include earning a living, but also access to property and natural resources, systems of savings, social networks and education.

Migrant

A migrant will be seen as a person whom chooses to move in order to improve the future prospects of themselves and their families.

Natural disaster

A natural disaster is an emergency situation posing significant danger to life and property that results from a natural cause. It can cause loss of life or property damage, and typically leaves some economic damage in its wake, the severity of which depends on the affected population's resilience, or ability to recover. Typical examples include floods, volcanic eruptions, earthquakes, tsunamis, and other geologic processes.

General Overview

Forced migration can be resumed as the assault on livelihood systems, which make staying in place untenable. As a matter of fact, if farmers can't gain access to their lands, workers earn their salary, social networks destroyed and deprivation a consequence of internal conflict or war, moving to where they'll be able to make a living and obtain physical and legal protection is but rational thinking.

Contemporary situations see civil protection and forced migration interconnected. Violent conflicts have taken on new manifestations and states, which have the recognized responsibility to protect their citizens, are either disinclined to do so (Sudan and Syria) or simply powerless to do so, as seen in Afghanistan, Iraq and Somalia, where non-state actors defy their obligation to protect civilians. In this case, international law and more particularly international humanitarian law, international human rights law and refugee law, should provide for protection by others. The trouble is that although countries hosting refugees and asylum seekers are widely distributed throughout the globe, low and middle-income countries host a disproportionately large number of refugees (four fifth of the global refugee population); people usually flee conflicted areas to find themselves in almost the same unstable situation - Afghans in Pakistan, Iraqis in Syria and Somalis in Yemen.

Difficulties to Provide Adequate Help and Protection

The combination of the number of reasons people will migrate, the lack of international and national law as well as norms and policies to respond adequately to their needs, are the two main reasons why forging appropriate responses to forced migration has become so difficult in the past few years for any state, particularly when you keep in mind that forced migration can in some cases blur lines with voluntary migration. This makes it even more difficult for states to determine who among the different migrants requires assistance and protection, as returning them forcibly to their home is not a viable option as it could place them in dangerous situations. All the same, refusing to make a distinction between migrants and forced migrants would violate every single humanitarian belief.

Still, some government policies do restrict migration, which places the forced migrant in a precarious situation: on one hand, if he remains home he will face disastrous consequences. On the other hand, no other clear-cut way to either reach safety within his country or migrate to another country has been given. The resistance to the arrival of refugees and asylum seekers is a regrettable outcome of the international community's inability to manage positively international migration in the era of globalization, except for highly skilled migrants and others in urgent need of humanitarian assistance and protection.

The Causes of Forced Migration

With the rapid increase of conflict situations, and the ability to evacuate large numbers of people, as witnessed in recent years with the examples of Haiti, Japan, Pakistan,

Iraq, Libya, Mali and now Syria, protecting the rights of forced migrants is becoming more and more important by the second. New factors are continuously interfering with this phenomenon, such as rapid urbanization, hazardous and environmentally contaminated sites, global climate change and new technological hazards, hence increasing vulnerability. Significant protection gaps are becoming the norm for many a forced migrant who falls outside the well-established legal and normative instruments that by now are sorely outdated.

The Different Types of Forced Migration

Forced migration can be precipitated by numerous events and as it's usually a combination of these events that will force migrants to migrate, they can't be ignored. Three different types of forced migration can be found:

Conflict induced displacement

Conflict induced displacement would comprehend three subcategories. The first one would be armed conflicts, often involving non-state actors like in Mali, Colombia, and Somalia. The second one would involve political instability and state repression; the recent events in North Africa and the Middle East, especially Syria today, largely fit this category, but it was also the case in Kenya (2007), Zimbabwe (2008) and Côte d'Ivoire (2011). The last one would be persecution of individuals or groups on the basis of factors such as race, religion, nationality, and membership in a particular social group (often gender) and political opinion.

Development induced displacement

These migrations take their origin in policies and projects implemented to supposedly enhance 'development'. Affected people usually stay in their home country but evidence clearly shows that very few of them are adequately compensated, even though guidelines on restoration for affected populations exist. Examples of this include large-scale infrastructure projects such as dams, roads, ports, airports; urban clearance initiatives; mining and deforestation; and the introduction of conservation parks/reserves and biosphere projects.

Disaster induced displacement

This category includes people displaced as a result of natural disasters, for instance by floods, (Pakistan 2010) volcanoes, landslides and earthquakes (Haiti 2010), environmental change like deforestation, desertification, land degradation,

global warming and finally man-made environmental disasters, for example chemical and biological accidents, industrial accidents, and radioactivity.

Forced Migration and Humanitarian Aid

When humanitarian aid arrives on site, their first concern will be saving lives, giving them access to basic necessities like food, shelter and health care, but it's insufficient to simply focus on that point, only concentrating on livelihood support once the situation is stabilized: the first priority of refugees and IDPs' after safeguarding their lives is to restore livelihoods for their economic wellbeing, self-reliance, dignity and integrity. That's the reason why they need protection to help them pursue livelihood opportunities without any form of harassment previously stated interfering.

Settling forced migrant populations in rural areas where they are free to support themselves through agriculture has proven to be successful, namely in Zambia, where Angolan refugees were allowed to farm between 1980 and 1990, no longer requiring any international assistance.

But then again, self-settled displacees have at very few occasions been able to gain access to water, firewood and agricultural land, unauthorized to travel or work, their livelihoods remaining insecure.

While displacees try to make the best of arising work opportunities, those providing aid often do not see what people are doing by themselves, assuming that people are totally helpless and making delivering effective livelihood support difficult

The Impact of Forced Migrants

Forced migration will, as any other phenomenon, have positive and negative consequences, be it for the affected populations or the communities from and to which they migrate. Significant economic impacts and costs will thus be produced, and although negative outcomes tend to come immediately to mind, this isn't necessarily true, especially if the migrating community minimizes the negative impacts and maximize the positive social and economic potential they can provide.

Negative impacts will particularly appear through emergency mass movements, generally related to rapid-onset disasters and large-scale or episodic conflicts; in these cases, considerable humanitarian assistance will be needed. These impacts can become even more extreme when the receiving communities are ill equipped or incapable to absorb large numbers of spontaneous displacees. Underutilized human and social capital of the displaced and their hosts, political strains on already fragile and conflict-affected countries,

environmental degradation where the displaced are present and diminished economic growth are the mostly well-known consequences of the negative impacts of refugees and IDPs in host countries.

Columbia – example of economic activity in urban areas after forced migration

After nearly 50 years of conflict, Columbia had the world's largest IDP population, (8.4% of the countries' total population). These huge migrant inflows caused the deterioration of urban labour market conditions for existing residents, coupled by the competition for jobs between the local, low skilled, informal workers and the IDPs (Calderon and Ibáñez, 2009). So even though although a large expansion of the informal economy is noticed, wages in this sector rapidly decline.

But displacement, especially in rural areas, does have enormous potential as is proven in the refugee camp of Dadaab in Kenya. Although this mainly tends to occur during protracted displacement, when refugees or IDPs have had the opportunity to establish new livelihoods and may contribute to the host economy, this outcome is seldom promoted.

The Living Conditions of Forced Migrants

Even though states have the duty to protect forced migrants, practice and theory do diverge. Fear of social exclusion, discrimination, loss of all dignity and a new or radically different environment are things those who are uprooted and relocated must cope with and eventually adapt to.

Mobilizing social and cultural resources to restore adequate levels of material and communal life largely depends on the humanity and resilience of the forced migrants themselves. They have important capacities that those supporting them must better understand and mobilize in order to provide assistance and protection when displacement occurs.

Diverse health needs of forced migrants, stressing the importance of enhancing professional standards and mainstreaming the health care of displaced persons. Ensuring strategic and operational priority for reproductive, maternal, mental and child health is emphasized.

Women in Displaced Situations

In many displaced communities, women are excessively represented compared to men and hence see themselves saddled with the task of feeding their family. Regrettably, this situation rarely enhances their economic power, as their gender makes them vulnerable to

exploitation and abuse. They will usually end up in dangerous or unsustainable livelihood activities for their family's short-term benefit, becoming easy prey for smugglers and traffickers, who will lure them with the promise of a better employment.

Despite these facts, displacement situations can be beneficial for women in some regards. Conscientious efforts to enhance their status and include them in consultation processes are constantly made, but there are drawbacks to this emancipation. Resentful because of their undermined authority, men will probably resort to gender-based violence, and the power the women gained will slowly wane after their reinstatement, reverting to time-honoured norms.

Host Countries' Fears Concerning Forced Migrants

Host countries are often disinclined to loosen constraints on displaced, and usually perceive the development strategies to integrate forced migrants economically and socially as a threat, for measures that encourage protracted displacement will ultimately defy their interests on two grounds, political and economic.

Economical discrimination is widely spread throughout the world, despite the evidence of its beneficial effect: significant public resentment against forced migrants, accused of stealing jobs, still lingers in Nairobi, Kenya and Peshawar, Pakistan.

Their contribution to the local economy is recurrently recognized after their reestablishment in their home country. Indeed, the repatriation of Afghan refugees early 2000 caused the local Pakistani's transport sector to collapse.

As such, the imposed restrictions by the host countries make it increasingly difficult for forced migrants to find legally paid jobs; therefore, many forced migrants have found a way of survival in the informal sectors, where the work more often than not is unprotected, underpaid and exploitative. Furthermore, in event that the forced migrant doesn't want to comply to given orders, others may resort to extortion and blackmail, threatening to give them up to the authorities unless they obey.

While in some cases extremely successful, such as the creation of a "Miniature Mogadishu" in Nairobi by Somali traders, this peculiar integration to the hosting economy shouldn't be promoted: displaced typically sport an illegal status and lack any necessary documents that would render them immune to arrest, detention and eviction without any form of prior notice from the host country. This means that in less than a day, a forced migrant who has successfully integrated the host country can become stateless, legally inexistent and helpless when most needy.

States are also worried that the conflict at the origin of the displacement may spill into their own country. Domestic security, social stability and internal destabilization thus become major concerns, which causes the host countries to prefer keeping the refugees in camps isolated from urban centres, where the displacees can easily be monitored and wield little political and economic power.

Forced Migration in the Nearby Future

The number of forced migrants hasn't stopped increasing in recent decades and will probably continue doing so in the future throughout civil conflicts which will inevitably lead to physical and political instability, separatist movements, new nations and warlord economies. The past twenty years have seen the appearance of millions of refugees and displaced people who have been unable to remain safely in their home communities, Rwanda and Bosnia and Herzegovina are but two examples. Violence, kidnapping, rape and other manifestations of insecure societies induce still more people to migrate both internally and across borders in search of safety.

Major Parties Involved and Their Views

International Organization for Migration

Initially established in 1951 as the Intergovernmental Committee for European Migration (ICEM), the today leading international organization for migration's sole purpose was to help resettle people displaced by World War II. Nowadays the IOM works to help ensure the orderly and humane management of migration, promotes international cooperation on migration issues, assists in the search for practical solutions to migration problems and provides humanitarian assistance to migrants in need, be they refugees, displaced persons or other uprooted people.

Lebanon

This country hosts a lot of refugees, Syrians as well as Palestinians, fleeing from the Syrian crisis. But the growing numbers cause the displacement to be longer. This causes refugees to live in extremely difficult living conditions. Public buildings can't accept any more refugees. Tents have been set up but it isn't enough. Some families sleep in the open air. Refugees have also a hard time to find any source of income and enter directly in competition with the locals, whom have the exact same need. This causes unnecessary tensions between the people.

Pakistan

Pakistan hosts over 1.6 million registered Afghans, the largest and most protracted refugee population in the world. Since March 2002, UNHCR has facilitated the return of almost 3.8 million registered Afghans from the country. As of October 2012 there were approximately 724,200 IDPs in Pakistan affected by the ongoing security operations in Khyber Pakhtunkhwa province and the Federally Administered Tribal Areas. Despite the Government's commitment to the Solutions Strategy for Afghan Refugees endorsed by all concerned stakeholders in Geneva in May 2012, there is as yet no national legal framework for asylum in Pakistan.

Syria

End of August 2013, 1.7 million Syrian refugees had been registered in Egypt, Iraq, Jordan Lebanon and Turkey. The political, social and economical situation in Syria incites civilians to migrate to neighbouring countries to seek refuge from the inhumane atrocities caused by the actual civil war between Bashar Al-Assad and the rebels. If Syrian refugees were at first quite easily accepted, the procedures have become more regulated so that only a small portion of refugees can seek asylum per day, leaving stranded Syrians at risk of air and artillery attacks.

United Nations High Commissioner for Refugees (UNHCR)

Established on December 14, 1950 by the United Nations General Assembly, the agency is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. Its most important mission is to safeguard the rights and wellbeing of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country. It also has a mandate to help stateless people.

Timeline of Events

The following list is non-exhaustive as many events triggering forced migration happen each year. It does however list a number of important treaties as well as recent catastrophes and crisis's that still have an important impact today.

Date	Description of event
1951	UN Convention Relating to the Status of Refugees
1967	Protocol Relating to the Status of Refugees
1986	Chernobyl Disaster
1998	UN Guiding Principles on Internal Displacement
1992	Armed Conflict in Bosnia
1994	Rwandan Genocide
2004	Indian Ocean tsunami
October, 2009	Kampala Convention
12 th January, 2010	Haiti Earthquake – Magnitude 7.0
February, 2011	Libyan Civil War
11 th March, 2011	Fukushima Disaster
15 th March, 2011	Syrian Crisis
21 st March, 2012	Malian Coup d'Etat

UN involvement, Relevant Resolutions, Treaties and Events

Quite a few treaties and conventions have been written concerning the rights of forced migrants, more particularly refugees. The strongest source of protection is provided by the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol but solely covers relatively circumscribed categories of people.

- The fourth Geneva Convention, 1949
- UN Convention Relating to the Status of Refugees, 1951
- Protocol Relating to the Status of Refugees, 1967
- Bangkok Principles on Status and Treatment of Refugees, 1966
- Organization of African Unity Refugee Convention, 1969
- Cartagena Declaration for Latin and Central American States, 1984
- UN Guiding Principles on Internal Displacement, 1998
- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, A.K.A The Kampala Convention, October 2009

Evaluation of Previous Attempts to Resolve the Issue

Sadly new treaties or conventions concerning the subject haven't been adopted, with few exceptions such as trafficking of persons (UN, 2000; Council of Europe, 2005). The UNHCR has, though, elaborated a 10-Point Plan of Action as not to confuse forced migrants and "normal migrants" to know those who should be prioritized. Instead, existing norms are being refined or adapted, and institutional structures are being reconfigured.

Early Attempts to resolve the Issue

The Geneva Conventions and Protocols only apply to civilians and people with protected status, including the displaced, in situations of armed conflict only. The 49th article of the Fourth Geneva Convention includes a clear prohibition of forced movement of civilians with the exception of temporary evacuations for population security or imperative military reasons.

As a different scenario applies to forcibly displaced migrants who have not crossed international borders, their rights differ as well and have been reaffirmed under the non-binding 1998 Guiding Principles on Internal Displacement (UN, 1998).

Responsibility to Protect (R2P)

At the 2005 UN World Summit, the norm of 'Responsibility to Protect' (R2P) was adopted with the aim of preventing and halting mass atrocities during times of both war and

peace. The norm took its inspiration in the concept of sovereignty as responsibility to urge states to protect their internally displaced populations. Unfortunately R2P remains a conceptual doctrine and not an operational tool: its rhetorical success has not been matched by practice on the ground as the UN Security Council's failure to support intervention in Darfur or Kosovo confirms.

The Concept of Temporary Protection Status

The practice of offering temporary protection status (TPS) was at first used to provide safe haven for Hondurans and Nicaraguans following Hurricane Mitch in 1998. TPS was offered by Brazil and the United States to Haitians following the 2010 earthquake. Around the same period, Nordic countries took the lead in providing this special status, which was especially useful to assist those whom fled the Arab uprisings, but couldn't obtain the refugee status, as it covers certain protection gaps for disaster-affected populations who cross international borders but are not covered by other norms. Now it's particularly used for those displaced by disasters other severe upheavals where there are no clear prospects of return within a definable period, and although the concept is starting to gain wider international interest, it's still a little different in practice.

The Kampala Convention

The Kampala Convention is a continental instrument that binds governments to provide legal protection for the rights and wellbeing of those forced to flee inside their home countries due to conflict, violence, natural disasters, or development projects, coming into force on the 6th December 2012. As of June 2013 it has been signed by 39 and ratified by 17 of the 54 member states of the African Union. Main points in this convention cover the primary responsibility of authorities, providing assistance to IDPs, addressing different causes of internal displacement such as conflict, generalized violence, human-caused or natural disasters, and development projects, like building dams or clearing land for large-scale agriculture. Finally, it recognizes the critical role that civil society organizations, and the communities which take them in, play in assisting IDPs and obliges governments to assess the needs and vulnerabilities of the forcibly displaced, and the host communities, in order to address the plight of people uprooted within their borders.

Possible Solutions

To improve the response of member states to protect the rights of forced migrants, links between governmental, humanitarian and development actors must be increased. The combination of the three could easily protect the right of forced migrants, by applying measures, such as:

- Assuring forced migrants, especially those displaced by conflict situations the certainty of immediate protection in temporary shelters, while waiting to start legal procedures;
- Promoting and protecting the livelihoods of forced migrants by easing access to work permits and licenses, and improving protection against threats of removal, refoulement, detention and harassment;
- Establishing sustainable development programs for displaced people and local communities, based on their resilience and efforts to adapt to the situation, which would contribute to economic recovery and growth from which both the displaced and hosts would benefit. This could involve providing cash support for starting small and local businesses, protection so women and children can travel safely out of the settlements or even adapting the provided assistance according to the environment;
- Establishing development strategies maximizing the use of the displaced populations' skills, entrepreneurship and human and economic capital by integrating them into the wider economy;
- Implementing more flexible policies towards refugee and IDP settlements, as well as to the refugee mobility, be it inside or outside the state's borders;
- Making sure that every government recognizes the legitimate needs, legal rights and aspirations of displaced people;
- Enhancing all governments planning and operational capacity to address humanitarian and development dimensions of forced displacement, especially if the state is known to having to host or perpetrate such migrations;
- Finding innovative approaches for delivering assistance, for instance by promoting and organizing humanitarian trips at a high school or university level. New generations would thus be rendered aware of the difficult situations other people have to cope with and perhaps more inclined to help change their living conditions;

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