MIGRATION POLICY PRACTICE

A Bimonthly Review by and for Policymakers Worldwide

Contents

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Introduction

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Welcome to the seventh issue of *Migration Policy Practice,* which focuses on policy and operational responses to migration crises caused by political turmoil, conflict or natural disasters.

Articles in this issue draw largely from contributions to IOM's ongoing International Dialogue on Migration (IDM) 2012, which aims to aims to integrate humanitarian and migration perspectives in the search for appropriate responses to the migration consequences of complex crises.

This issue of MPP includes eight articles (in English, French and Spanish) written mostly by participants in the IDM 2012. This includes senior representatives of the US Department of State, the Ministry of Foreign Affairs of Chad, the Colombian Government, the Ministry of Foreign Affairs and Trade of the Republic of Korea, and the National Immigration Council of Brazil.

This issue of MPP also includes articles by Roger Zetter of the University of Oxford, on changing trends in and new responses to forced migration; and Joke Reijven and Joris van Wijk of VU University Amsterdam, on dealing with the consequences of article 1F of the Refugee Convention.

We hope you enjoy this edition of *Migration Policy Practice*, and as always, we look forward to your comments, suggestions and possible contributions to future issues of the journal.

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The International Dialogue on Migration 2012: Managing migration in crisis situations

Karoline Popp[1]

The International Dialogue on Migration (IDM) is IOM's principal forum for migration policy dialogue. Created by Member States of IOM in 2001 on the occasion of the Organization's fiftieth anniversary, the IDM fulfils an institutional mandate of IOM to provide a forum for the exchange of views and experiences and to promote regional and global debate and dialogue on migration.

The past decades have witnessed an expansion of intergovernmental and other initiatives to develop joint approaches to migration. The IDM has held a pioneering role in bringing together all migration stakeholders, at a global level, for candid discussions on the opportunities and challenges which migration presents. The Dialogue is open to IOM Member and Observer States, as well as international and civil society organizations, academia, the private sector and migrants themselves. It provides a space to analyse current and emerging issues in migration governance and to exchange policy approaches and effective practices.

The IDM places value and emphasis on diverse topics, views and actors to shed light on migration issues in all their complexity. Over the years, the IDM has addressed the link of migration to labour markets and development, integration and social cohesion, human rights of migrants, climate change, and human trafficking, to name a few. The annual overarching themes as well as the topics for the workshops are chosen by IOM Member and Observer States and therefore reflect their priorities at a given moment. For 2012, the IOM membership selected the theme "Managing migration in crisis situations."

In its first workshop of the year, on 24 and 25 April 2012, the IDM explored the topic "Moving to safety: migration consequences of complex crises." The workshop introduced the concept of "migration crisis" to capture a contemporary reality in which human mobility is a major feature of humanitarian crises such as natural disasters or conflicts. The concept aims to highlight the complexity of patterns of movement that emerge from crises: for example, temporary displacement may become protracted initially; internal movements spill across borders; and crises and displacement situations give rise to other forms of migration such as search for work, migration to cities, irregular and mixed movements, trafficking and smuggling.

Discussions revolved around a number of framing questions: How do people move in the event of a disaster? What is the relationship between migration patterns before, during and after a crisis? What happens to those who do not or cannot move in crisis situations? What lessons drawn from responses to internal displacement can be transferred to cross-border forced migration, and vice versa? How can migration management frameworks support response to crises?

Workshop participants discussed various types of migration crises, including sudden large-scale events and slowly evolving situations, natural and man-made crises, and their internal and cross-border dimensions. They also pointed out that the effects of climate change already give rise to forced migration, and to potentially large migration crises in the future. They acknowledged the need to develop new strategies to address the nexus between crises and mobility trends and patterns.

According to workshop participants, existing humanitarian and protection mechanisms often do not cover all vulnerable mobile populations and do not address all the risks, vulnerabilities and human rights violations they experience in crises. In addition, those most neglected are sometimes unable to move during a crisis, who remain trapped in dangerous circumstances. At the same time, delegates emphasized the agency, capacity and resilience of affected communities and cautioned against perpetuating the victimization of such populations.

Participants acknowledged that humanitarian and migration policies can reinforce each other at all stages of crisis response. For example, participants highlighted different migration management tools that are relevant in a migration crisis: temporary protection, expedited visa procedures, special humanitarian visas, stabilization of border areas and humanitarian border management, referral systems for persons with special protection needs, and a better utilization of migration and remittances for post-crisis recovery.

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The second workshop in the 2012 series, held on 13 and 14 September 2012, was about "Protecting migrants during times of crisis: immediate responses and sustainable strategies." It narrowed the focus to a specific population affected by crises, but often invisible to humanitarian response mechanisms: international migrants who are caught up in a crisis in their destination or transit countries. The workshop asked in what ways migrants are particularly vulnerable in crisis situations and sought to identify gaps in protecting and assisting them. In doing so, participants considered both the immediate and longer-term repercussions when migrants are affected by crises.

Many participants emphasized that migrants experience specific vulnerabilities when they are stranded in a crisis situation – undocumented migrants or migrant domestic employees working in isolated conditions have particular difficulties in accessing assistance. In this context, it also emerged that the level of social protection and respect for their human rights that migrants enjoy before a crisis will directly influence how migrants fare during and after a crisis.

Destination and origin countries share responsibility for migrants during crises and need to factor their migrant population into contingency planning for emergencies. Many countries, however, acknowledged that they lack even the proper data to know where their migrants are, who they are, and how to reach them in the event of a crisis. Nonetheless, a growing number of innovative practices exist to render humanitarian assistance more accessible to migrants or to strengthen consular services in emergency situations.

Many participants referenced the crisis in Libya in 2011 which provoked the sudden return of hundreds of thousands of migrant workers to their home countries. Return to the home country is sometimes inevitable to protect migrants caught in crises, but this is not without

consequences – for returnees who face unemployment and debt, for families who had relied on a steady stream of remittances, or for countries that may already be struggling with development or security issues.

Each IDM workshop attracted about 250 participants. Governmental representatives from more than 70 countries were joined by practitioners from the United Nations and non-governmental organizations, as well as academic experts. Many called for closer cooperation among governments, including at regional level, and for better coordination among international agencies. Numerous participants recognized the central role of IOM in responding to migration crises, especially where international migrants are predominantly affected.

The IDM 2012 forms part of a broader institutional strategy to highlight migration crises as a growing challenge for States and the international community; as an issue of global importance in the debate on migration governance; and as an institutional priority for IOM. In particular, IOM has worked with its Member States to enhance coherence between the Organization's humanitarian programmes and relevant migration management activities in resolving migration crises. The resultant migration crisis operational framework will allow IOM and its partners to better analyse, prepare for and address the multiple migration dimensions of contemporary crises.

For further information on the IDM and the two workshops summarized in this article, please visit www.iom.int/cms/idm, as well as www.iom.int/cms/idmcomplexcrises and www.iom.int/cms/idmmigrantsincrisis, respectively. Drawing partly from the Organization's operational experience during the 2011 crisis in Libya, IOM has also produced a number of publications related to the theme of the IDM in 2012, which you may obtain from the above websites or from http://publications.iom.int/bookstore/.

Forced migration – changing trends, new responses

Roger Zetter[1]

Introduction

In the contemporary era, the complex nature of disasters and conflicts generate an enormous potential for forcibly displacing large numbers of people. Worldwide, some 43 million people are either refugees or internally displaced persons (IDPs) removed by conflict and violence (UNHCR, 2012a; IDMC, 2012). Forced migration, in particular, is symptomatic of humanitarian crises and has many complex manifestations. The conditions, intensity and configurations of forced migration vary in time, location and relation to the crisis drivers and the different socio-economic and political contexts. This situation poses new challenges and demand new responses from humanitarian actors in their strategies, tools, capacities and organizational architecture.

This short paper provides an overview of some of the key thematic issues and challenges – the drivers and dynamics of forced migration. It outlines the impacts of these crises and their migration consequences for humanitarian actors, discussing emerging practices, tools and lessons, and some of the implications for the organizational and institutional architecture of the humanitarian response.

Thematic issues and challenges – drivers and dynamics

The main drivers of forced migration are not fundamentally new. For the most part, the drivers are conflict and disasters, but they precipitate new trends and dynamics, different typologies and trajectories, novel patterns and processes, all of which have implications for humanitarian and developmental actors. Moreover, major global trends such as population increase, urbanization, environmental and climate change, increasing poverty and political repression all accentuate vulnerability, the likelihood of crises developing and thus the propensity for forced migration.

However, caution is needed in ascribing a single cause that precipitates forced migration. More usually, a combination of multiple triggers, often deriving from unpredictable events, drives forced migration. This imparts complexity to the contemporary dynamics of forced migration.

What are the trends? From a potentially large portfolio, four trends are especially pertinent to the present discussion.

Conflict, non-state actors and displacement

Over the last two decades, conflict precipitating humanitarian crises and migration, especially internal displacement, is increasingly driven by non-state actors – for example in Colombia, Somalia, the Democratic Republic of Congo, and insurgency in Iraq. This situation has substantial implications on the mobility patterns of displaced people: the patterns and processes tend to be episodic rather than single movement, spatially diffused rather than unidirectional – often not just one way and often over very limited distances – and far less predictable than in the past. People deploy a range of strategies to deal with conflict and minimize risk in order to sustain their household livelihoods. In some instances there is microdisplacement: people move within or between neighborhoods, or to peri-urban areas or rural hinterlands or from village to village seeking security. They may use a strategy of dividing up the family across different locations. In some cases, these strategies build to more permanent departure and more significant distances beyond conflict regions and across national borders. But in other cases, the more "localized" strategies are sustained over long periods of time.

But mobility is not the only disruption and dislocation: even those staying put have been fundamentally unsettled in terms of their household livelihoods. Some households are rendered involuntarily immobile because fighting makes it more dangerous to move, or because they lack the resources to leave. For example, in Somalia, Al-Shabaab has made extreme efforts to prevent people from leaving areas under its control, indicating a more proactive political attempt to control mobility.

Lying behind these dynamics and scenarios are other implications – who goes to camps, who goes to towns and cities, who goes back to check the house or tend crops and the repercussions for gender roles and responsibilities.

Resurgence of state repression, persecution and political instability

The rise of non-state actors as a key driver of forced displacement has not diminished the significance of classic conditions of state persecution and fragility, so prevalent in the 1970s and the 1980s, as still a major cause of refugees and IDPs. The Arab Uprisings of 2010–2012, notably in Libya, Tunisia, Yemen and Syria broadly fit this category, exemplifying how state repression, authoritarian regimes, weak governance and the denial of human rights lead to violence, conflict and eventually large-scale population displacement with hundreds of thousands of nationals and foreigners fleeing across international borders. A similar cocktail of outcomes surrounding contested elections in Kenya (2007), Zimbabwe (2008 and subsequently) and Côte d'Ivoire (2011), further illustrate the saliency of state instability. However, we should be careful not to homogenize the phenomenon of the Arab Spring and these other popular uprisings, since they reflect divergent economic grievances, social dynamics and demographics.

Syria has so far followed the classic pattern of protracted civil war producing significant numbers of refugees, rather than IDPs, currently totaling 120,000 registered by UNHCR in four countries,[2] but the number is significantly higher with over 140,000 in Jordan alone. Although there is no civil war in Zimbabwe, the ongoing instability there has also produced the familiar conditions of protracted exile of probably 2 million Zimbabweans, mainly in South Africa.

These two countries, however, seem to be the exception to the distinctive and novel migration dynamics and issues of migration and refugee governance that characterize the other cases. Here the main characteristics have been: the very short time but intense scale of the population displacement; the protection of third country nationals (TCN), both regular and irregular migrants resident in the countries affected by the uprisings who were essentially bystanders caught up in these domestic crises, as well as the protection needs of these refugees; and the role of state actors and international agencies.

In all these cases, the situation of IDPs remains a continuing concern for international actors that requires action to secure protection and sustainable solutions to their displacement. At the same time, migratory outcomes of these uprisings expose the dynamics of socio-economic unrest and exclusion, which link to the declining opportunity for migration from the global south to industrialized countries. Thus, situations which precipitate forced migration expose broader challenges of migration management and restrictionist strategies of the European Union. This increases vulnerability of migrants.

Urbanization and forced displacement

For many decades, humanitarian actors have largely been geared up to assist encamped refugee populations, or to support disaster-affected populations in rural areas. But the urbanization of forced displacement has dramatically changed this picture in the last few years in three ways.

First, and most importantly, well over half the world's 10.4 million refugees, the large majority of Palestinian refugees, and at least 13 million conflict-related IDPs live in urban areas (UNHCR, 2012a; IDMC, 2011a). Out of fear of harassment, detention and possible *refoulement* many urban refugees and IDPs may be unregistered and undocumented. Despite lacking effective protection and potentially vulnerable, they are attracted to urban areas because of the economic opportunities to restore and develop livelihoods, especially in conditions of protracted displacement, and better opportunities to access social facilities.

Second, over 50 per cent of the world's population now resides in cities, thus increasing the volume more susceptible to urban crises, notably disasters. This is because the majority of urban residents live in densely built informal settlements with limited access to water and sanitation, and in hazardous environments at risk of flooding, fires and landslips.

Third, in recent years, urban violence, although comparatively less visible than other drivers, has become a significant phenomenon precipitating substantial intra- and inter-urban forced displacement. On the one hand, this is the consequence of rapid urbanization, pressure on scarce resources of land and water exacerbated by high levels of socio-economic deprivation and impoverishment. Alongside poverty-related generalized and indiscriminate violence (including drug cartels, protection rackets, land grabbing, exploitation and sexual and gender-based violence), political conflict, such as post-election violence in Kenya, insurgency in Iraq, and decades of sectarian violence in Northern Ireland, have been increasingly played out in urban areas, causing enormous population upheaval.

Slow-onset disasters and population displacement

Thus far, we have considered how the changing character of violence and conflict produces new patterns and processes of mobility and forced migration. Disasters and natural hazards, however, also remain major drivers of displacement. Although forced displacement does

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[2] UNHCR, Demographic Data of Registered Population, *Syria Regional Refugee Response Information Sharing Portal*. Available from http://data.unhcr.org/syrianrefugees/regional.php (accessed 31July 2012).

not necessarily accompany disasters, the tendency for this to happen is increasing, for example cyclones Aila in Bangladesh and Nargis in Myanmar, the tsunamis in the Indian Ocean in 2004 and Japan in 2011, and prolonged drought in Somalia in 2011. Almost 15 million people were displaced by disasters in 2011, and over 42 million in 2010 (an exceptional year with flooding in Pakistan and the Haiti earthquake) (IDMC, 2011b).

Alongside disasters resulting from cyclones and earthquakes, evidence increasingly links changes in climate – manifest in greater frequency and intensity of extreme weather events, rising sea levels and desertification – to migration. Countries such as Bangladesh and Viet Nam are especially prone to displacement resulting from rising sea levels, whilst sub-Saharan Africa will experience increasing desertification, rendering pastoral livelihoods no longer sustainable and migration inevitable. The increasing occurrence of severe floods and desertification may potentially push large numbers of people out of affected areas. The links between climate change and migration, however, are complicated and still poorly understood. Such changes are rarely unique drivers of population displacement. They are one significant determinant, in conjunction with economic, social and political factors, and usually linked to existing vulnerabilities.

Who is a forced migrant?

Clearly, this brief analysis of four of the most important trends of population displacement raises the familiar conceptual dichotomy and policy challenge – who is voluntary and who is a forced migrant. The complex and often overlapping drivers make it as difficult to distinguish and delineate these two categories (Zetter, 2007). An intricate web of causation determines people's migration strategies and multiple forces are at play – global and regional geopolitics, fragility of domestic governance and environmental pressures combine to produce violence, persecution and rights abuse affecting large numbers of people. And in the case of Somalia these factors combined with the environmental challenge of recurrent drought in the region. Together with these structural factors, family situations and household characteristics determine the migration response – direction, timing, destination, frequency and demography. As we see in the Arab Spring, stranded migrants, stateless people, refugees and IDPs (both nationals and TCNs) were mixed together. In some senses, they were all forced, directly or indirectly, by violence and conflict but not according to the classic typologies.

These processes and patterns pose major challenges to humanitarian and development actors – appropriate tools and responses for different categories and different locations (including the predominance of urban destinations), different protection needs, and the differing institutional responsibilities. These challenges are now considered.

Implications for humanitarian and development actors

Regardless of the reasons why people are uprooted, they must all deal with the consequent stresses and disruption – loss of homes, jobs, the breakup of families and communities – and adapt to new or radically changed environments. Mobilizing social and cultural resources is a key factor in re-establishing viable communities and to restore and sustain adequate levels of material well-being.

For humanitarian and development actors, the needs of communities affected by forced migration remain broadly constant. But the changing trends in displacement discussed above, combined with the inevitably evolving organizational architecture, capacity and resources to respond to these demands, pose new challenges which are now outlined. Of the many priorities, three are discussed here.

Redefining vulnerability: enhancing security and protection

The increasing complexity and unpredictability of violence and conflict accentuate vulnerability and diminish the scope for protection – conditions which threaten the safety, dignity and integrity of refugees and IDPs. Yet it is not just conflict which creates vulnerability, but disruption to livelihoods and destruction of social institutions caused by conflict. At the same time, in urban areas, 1 in 3 residents (or 1 billion people worldwide) live in slums or marginal informal settlements where vulnerability is chronic.

What can be done to reduce vulnerability and enhance protection? Promising initiatives are evident but they need substantial development if vulnerability is to be reduced and the practice of protection is to be effectively reframed.

The rights-based approach is increasingly advocated by humanitarian agencies. Rather than trying to distinguish among different categories such as refugees who are persecuted, those fleeing generalized violence and insecurity described above, and those whose livelihoods are destroyed by drought – all three categories apply in Somalia – a rights-based approach recognizes this diversity of need, even where there is no clear "legal" entitlement, while allowing targeted support for particular vulnerable groups.

It is imperative that humanitarians develop a better understanding of the vulnerabilities of the at-risk populations with whom they are concerned in order to design high-impact assistance strategies. This means developing tools that can more precisely assess

who are vulnerable groups, what vulnerabilities they experience while bearing in mind that these tend to be multidimensional, and what are the "triggers" that distinguish acute from chronic vulnerability. Given the multisectoral dimensions of vulnerability and the diversity of actors, a significant challenge is to improve the coordination of vulnerability and needs assessments in mapping and evaluating the vulnerabilities of different groups.

Another essential dimension is to recognize that refugee and IDP communities, as well as those displaced by disasters, are active agents coping with vulnerability and playing a crucial role in providing their own protection needs (Horst, 2006). Community-based approaches are more appropriate since self-protection and social protection tools are based on the communities' own understanding of their protection needs and the scope of local protection mechanisms. In this context, protection, livelihood support and thus the potential to reduce vulnerability should go hand in hand in addressing the needs of forcibly displaced populations. This trilogy calls for policies and strategies that link needs-based livelihood programmes to protection.

Humanitarian architecture – promoting coordination and enhancing partnership

The changing patterns, processes and destinations of forced migration not only demand that humanitarian actors develop new tools, policies and strategies. New ways of organizing, managing and delivering assistance are also required, which are reshaping the humanitarian architecture. Particularly in urban areas, where indigenous capacities are far more developed than in rural areas, humanitarian agencies now need to work with and through local community groups and in partnership with local authorities and new interlocutors from the private and business sector. Where possible, these multi-stakeholder partnerships need to be built in advance of crises as part of preparedness.

These strategies should recognize that the host government – at national and local/municipal levels – must lead emergency humanitarian relief and recovery planning and delivery. These partnerships should build local ownership and thus help to overcome the "parallel response" by humanitarian actors, which weaken existing, indigenous capacities. In this way, country-led humanitarian assistance and recovery planning, coordination and implementation can be strengthened. For example, in Syria and Jordan, UNHCR and other agencies have directed funds for relief efforts for Iraqi refugees through public authorities and existing institutional infrastructure and capacity (Pavanello with Haysom, 2012). In Jordan, now, the Government is extending this approach to assist the 140,000 refugees from the intensifying Syrian crisis. In Kenya, following the post-election violence of 2007 and led by the Kenya

Red Cross Society, considerable progress has been made in coordinating a multi-agency program of mapping and responding to urban vulnerability (OCHA and UN-Habitat, forthcoming). These examples illustrate ways in which national agencies, with international support where appropriate, can lead collaborative efforts to assist displaced and vulnerable populations.

Lying behind these changes in the humanitarian architecture is the Inter-Agency Standing Committee's Transformative Agenda (TA), updating and revising the 2005 Humanitarian Response Review (HRR) and in particular the "cluster" approach to coordination. The 2005 HRR succeeded in reducing gaps in humanitarian assistance and improved programme coordination and delivery by humanitarian actors (Steets et al., 2010). At the time, a radical reformulation of the United Nations' humanitarian efforts, and subsequently poor inter-agency performance in Darfur, Pakistan, the Horn of Africa and Haiti, precipitated further reform.

Among the challenges the TA must tackle are the following: the cluster approach must become less process-oriented and increase its focus on delivery, outcomes and area-based programming; rapid deployment of operational capacity in major emergencies and coordination, particularly in urban areas, must be enhanced; many recipient governments, such as Kenya and Ethiopia and the Philippines, now have well-established technical expertise and structures for managing and delivering humanitarian assistance and the transformation process must ensure that these capacities are meaningfully taken into account with strategies and implementation plans that foster partnerships from the outset.

Transcending the developmental–humanitarian divide and promoting economic development

Two salient and interrelated factors underscore the need to transcend the enduring divide between developmental and humanitarian actors and to promote longer-term economic development for displaced communities and their hosts.

First, international humanitarian assistance to refugees and IDPs from the Development Assistance Committee of the Organization for Economic Cooperation and Development exceeds USD 8 billion per annum (IFRC, forthcoming) or about 6 per cent of overseas development assistance. This excludes host country and NGO expenditure from private sources, which would add substantially to the figure. Humanitarian focus on the social consequences of forced migration sidelines what should be a mainstream concern for the developmental and economic costs and impacts of forced migration on the populations themselves, their hosts and for humanitarian actors and international donors. Remarkably, for a global budget of this size, economic analysis of the outcomes of this "investment"

and the developmental potential, are the most neglected elements of the humanitarian enterprise.

The second factor is that the majority of the world's forcibly displaced populations live in protracted exile – more than 7 million refugees (three quarters of the population under UNHCR's mandate) and more than 13 million IDPs (UNHCR, 2012b; IDMC, 2011a). The three classic, durable solutions to refugee crises are clearly not working and a positive way to address this situation is to promote developmental responses which are both more economically sustainable and better able to protect the dignity and integrity of refugees and IDPs.

How might these conditions be tackled? Put simply, protracted displacement is not primarily a humanitarian, protection and social challenge but a political, developmental and economic one. But an enormous humanitarian budget and the persistence of protracted displacement misconceive these realities. Reframing humanitarian crises as developmental opportunities would reduce the economic impacts and costs, contribute to economic recovery and growth from which both the displaced and their hosts would benefit. Indeed, a recent study of Dadaab, Kenya, refugee camps showed that the positive impact in terms of the economic benefits of the camps for the host community was USD 14 million, about 25 per cent of the per capita income of the province. Income to the host community from the sale of livestock and milk alone was USD 3 million while more than 1,200 local people benefited from refugee camp-related employment or trade-related work (Government of Kenya, 2010).

Of course, the fundamental challenge is to address political resistance to longer-term settlement, the almost inevitable product of protracted displacement. An emergency or humanitarian label signals an unresolved situation and the prospect (albeit increasingly unrealistic) that the refugees and IDPs are only temporary and that they will return or be resettled. Yet, despite the reality of incremental local integration by refugees – in other words, autonomous developmental solutions adopted by the refugees themselves – host countries resist this process in order to protect national identity, defend their citizenship norms and reduce the economic burden that refugees are perceived to impose.

Recognizing the legal rights and aspirations of displaced people by relaxing conditions of formal citizenship status and by allowing more mobility by refugees both within the host country and back and forth to the country of origin – a well-developed process among Iraqi and Somali refugees, for example – would go some way to deal with the realities. By providing greater certainty for the refugees, these strategies would also help to provide economic security and thus the potential to maximize the economic and the developmental contribution of the refugees.

Humanitarian and development actors cannot themselves solve these essentially political challenges, although their policies and practices are partly responsible for the persistence of the humanitarian-development divide which underlies the problem. But at an operational and programme level there is much that can be done to promote developmental action.

First, there is the need to enhance the links between humanitarian assistance and development/poverty-reduction strategies, not least because both refugees and their hosts frequently experience the same chronic vulnerabilities of impoverished livelihoods, inadequate nutritional and health standards and precarious living conditions. Joint programming would reduce their common vulnerabilities, diminish the widely acknowledged tensions caused between refugees who are "privileged" by assistance and their hosts and improve transition from emergency conditions to long-term stability.

Next, programming and multi-year investment strategies are needed to encourage economic activity for the refugees and their hosts, since evidence increasingly shows that, under supportive conditions, refugees add to the economic capacity of countries and such strategies that would be largely beneficial for the displaced communities and their hosts. Of value here are policies such as: supporting self-build construction; promoting urban and peri-urban agriculture; and building on local capacities by leveraging local suppliers and contractors instead of corporate enterprises (IASC, 2010; ALNAP, 2009).

A third arena where developmental strategies appear to be successful is the rapid growth in cash and vouchers as an alternative to material support and in-kind aid in emergency situations. Although this appears to challenge the fundamental precepts of aid as charity, the advantages lie in enabling refugee and IDP beneficiaries to exercise choice in meeting their household needs, and in directly expanding the local economy and markets by injecting large-scale and predictable demand which will have developmental impacts. Used in a diverse range of situations – UNRWA in Palestine, UNICEF programming in the Democratic Republic of Congo, Save the Children in Dadaab refugee camps to overcome malnutrition, and by several agencies in Somalia where humanitarian access is impossible – the evidence suggests that cash and vouchers are a valuable economic tool in emergency and longer-term displacement situations (Development Initiatives, 2012; Harvey and Bailey, 2011).

Conclusions

Space prevents discussion of other crucial challenges for humanitarian and development actors, for example: their role in supporting the resilience of affected communities and partnering and empowering community-based

responses; tackling the growing problem of housing, land and property in resettlement or return of forcibly displaced people, notably problematic in Haiti; and the situation of IDPs, which remains a continuing concern to secure protection and sustainable solutions.

As a coda to this article, however, what remains at the crux of contemporary humanitarian concerns is that narrowly defined legal and normative categories (refugee, IDP and the like) often do not capture the humanitarian realities of the conditions and circumstances under which people move and where they end up. As we have seen, people are forcibly displaced for a complex array of reasons and their mobility often defies the established categories and labels. This calls for more flexible typologies and norms if humanitarian needs and vulnerabilities are to be reduced and more positive strategies that reflect the aspirations of refugees and IDPs are to be adopted.

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Managing migration in crisis situations: Reflections and experiences on US humanitarian assistance and migration response

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The United States of America has long played a significant role in addressing migration challenges associated with complex emergencies and natural disasters around the world. The US Department of State's Bureau of Population, Refugees, and Migration (PRM) is the lead entity of the Government of the United States for policy discussions on the subject of international migration. Whether responding to refugees, internally displaced persons (IDPs), or other vulnerable migrant populations, we attempt to carefully identify and respond to humanitarian needs and protection concerns for the world's most vulnerable populations on the move.

The United States has responded to many crises with migration consequences over the years, including the January 2010 earthquake in Haiti and the 2011 civil unrest in Libya. The United States' 2010–2011 chairmanship of the Intergovernmental Consultations on Migration, Asylum and Refugees (IGC) brought countries together to discuss responses to migration challenges in such humanitarian emergencies.

As the IGC chair, the United States selected the theme "Humanitarian Responses to Crises with Migration Consequences." We wanted to examine the impact of and responses to crises – such as armed conflict, political instability, natural disasters, or pandemics – that spurred significant movements of people, many of whom cannot be considered refugees under international law, but who nevertheless are often highly vulnerable and in need of protection. Our initial motivation for choosing this theme was our experience with the complex US Government inter-agency response to the Haiti earthquake in January 2010. After the subsequent outbreak of political unrest associated with "the Arab Spring" and ensuing crisis-induced population movements, that theme seemed almost prescient.

As part of our IGC chairmanship, we partnered with the US Department of Homeland Security (DHS) to sponsor a workshop in March 2011 that examined the balance between the need for agile and compassionate responses by immigration systems and the need to preserve the integrity of those systems. Among the key themes raised there were the importance of preparedness and pre-established immigration policies that can be quickly implemented as soon as an emergency occurs; the establishment of mechanisms for quickly identifying individuals in need of international protection; and the critical value of coordination for both the immediate and longer term migration response.

Preparedness

Governments can and should do a great deal before crises strike to analyse migration trends and patterns, in order to anticipate the potential impact of those crises on migrant populations, in particular their own citizens living and working abroad. Countries can start by endeavouring to know where their citizens are and under what immigration status they typically reside in host countries. Governments can establish dialogues internally and with host governments to plan for large-scale evacuations of citizens in case of an emergency.

The International Organization for Migration (IOM) has done much to encourage this type of contingency planning. For example, IOM and the Republic of Korea recently signed a Memorandum of Understanding to support the evacuation of Korean nationals in future emergencies worldwide. The United States strongly supported the establishment of IOM's Migration Emergency Response Mechanism and in 2012 contributed USD 2.5 million to that Fund, in part due to our experiences in the Libya crisis, but also recognizing more generally that the international community needs and wants a rapid response mechanism. This is why we urge all IOM Member States to support this preparedness mechanism, which will ensure improved IOM capacity for an early response to future migration crises. It is important to also note that this fund does not replace the responsibility governments have to their citizens. We also encourage the creation of national contingency funds and enhanced consular services to help bring migrants home. National contingency funds could be public–private initiatives; for example, employment agencies brokering overseas jobs could provide funds to return their citizens, or each country could make a contribution to IOM's Response Fund. We also urge countries to look at ways to develop surge capacity for emergency consular services for its citizens who may end up stranded overseas.

Well-conceived immigration policies and operational tools can prevent unexpected migration flows as a consequence of crises. From our experiences, particularly in Haiti, we know that clear policies and reliable assistance can help to minimize dangerous movements of people.

Protection

A strong foundation in protection principles is also essential for an effective and humane response to crisis-induced movements, which often include asylum-seekers, trafficking victims, unaccompanied minors, and other individuals with unique protection needs. This was certainly the case with the massive population outflow from Libya in 2011, where the Government of Tunisia worked with IOM, UNHCR, UNICEF and others to provide special protection to unaccompanied migrant minors. Any policy and operational response to similar movements in the future should include robust procedures to identify and address protection needs such as improving methods to identify and provide emergency assistance to the most vulnerable migrants.

Coordination

Finally, coordination on many fronts is critical for an effective migration response. Coordination within governments is necessary to develop effective plans and rapid interventions for evacuations and other facilitated movement, and to ensure adequate capacity to receive and reintegrate returning migrants. Effective international coordination is also necessary, both to prevent secondary humanitarian crises caused by increased migration and to encourage long-term regional coordination to establish improved response capacity and contingency planning.

The United States has been highly involved with many crises where our response reflected these principles. The 2010 Haiti earthquake and the 2011 Libya conflict are two recent examples that illustrate these points.

Haiti

After the 2010 Haiti earthquake, the United States' immediate concern was to help save lives, provide emergency consular assistance to US citizens and address critical humanitarian needs. But we were also concerned that the earthquake could trigger large-scale irregular migration, and that large numbers of people might take to the sea under hazardous conditions, with the potential for great loss of life. The latter concern was grounded in historical experience.

Events in the 1990s led to nearly 40,000 Haitians being picked up at sea by the US Coast Guard and brought to Guantanamo Bay Naval Station. Some were paroled into the United States and many were returned to Haiti after

being screened for protection concerns. Since then, we have developed a number of mechanisms and policy tools to respond humanely and quickly to similar crises, including establishing intra-government contingency planning and coordination groups; conducting annual inter-agency military and civilian exercises for mass migration response; and employing an improved framework for providing emergency immigration benefits such as temporary protected status and humanitarian parole.

In 2010, the US Government implemented a number of programmatic and policy responses that benefited from the lessons learned in the 1990s and the preparedness activities developed since. Initially, the large-scale US and international humanitarian response to the Port-au-Prince area for nearly 2 million IDPs discouraged mass migration as earthquake victims quickly began receiving food, water and sanitation services in place. We also supported United Nations and IOM humanitarian activities on the Haiti–Dominican Republic border where thousands of Haitians sought medical care. Finally, the United States bolstered efforts to discourage large-scale maritime migration by strengthening the Government of Haiti's capacity to receive would-be migrants who were picked up in unsafe vessels and returned by the Haitian and US Coast Guards. PRM alone provided USD 14.2 million in funding to address migration challenges associated with the earthquake.

In addition to this humanitarian assistance, the Department of Homeland Security's US Citizenship and Immigration Services also provided immigration relief to Haitians. Some 51,000 Haitians received temporary protected status allowing them to stay and work in the United States. Many Haitians in need of emergency medical care were allowed into the United States under humanitarian parole, and visa issuance was expedited for immediate family members of US citizens or legal permanent residents from Haiti.

Libya

As the Libya crisis unfolded in 2011, it quickly became apparent to the international community that large numbers of third-country nationals who had been working and living there were in great peril. Some were stranded inside Libya and required urgent evacuation assistance from IOM and the International Committee of the Red Cross (ICRC). Others managed to cross into Tunisia and Egypt where they required immediate humanitarian assistance as well as repatriation services. Thanks in great part to IOM, UNHCR, and neighbouring governments, excellent coordination and quick actions were successful in addressing immediate relief needs of more than 1 million people fleeing Libya and repatriating some 300,000 migrant workers to their home countries. Many believe this mass effort helped to avert a catastrophic humanitarian crisis in the border

areas – and perhaps also to avoid a secondary wave of irregular migration. To support these efforts, the US Government provided USD 92 million in humanitarian assistance in fiscal year 2011, of which PRM funding accounted for USD 60 million, primarily for protection and humanitarian response activities conducted by IOM, UNHCR, and ICRC.

Many countries responded admirably to the Libya crisis; international coordination and cooperation was outstanding if not always easy. The international community rallied to provide significant funding and logistical support for evacuations, and a number of countries enhanced consular services to provide emergency assistance for replacing necessary paperwork to help their citizens return home. For the US Government, the whole endeavor was a sound endorsement for the international humanitarian architecture in which we have invested, while also pointing to some clear areas for further development of policies and practices including improving methods for identifying and providing emergency assistance to vulnerable migrants.

Conclusion

All of the themes mentioned above are challenging when addressing a fast-moving humanitarian crisis, especially given the need to also be aware of potential security threats and political consequences of mass population movements. We should not view the response to the migration dynamics and impacts independently of the humanitarian response. Natural disasters and political crises often trigger significant displacement and migration, and we need to be collectively prepared to use all diplomatic, programmatic and immigration tools at hand to respond in a more integrated manner to people on the move in an emergency. The international community has a major role to play in migration crisis response, and in order to respond effectively needs active cooperation and participation before, during, and after a crisis.

An unfolding humanitarian crisis in Syria is once again creating an imperative for the international community to meet the needs of hundreds of thousands of people affected by and fleeing armed conflict and violence. The United States is working with our international partners to ensure that we incorporate the lessons learned from previous crises, such as Haiti and Libya, as we assist those seeking safety.

La política de migraciones brasileña y la migración haitiana a Brasil

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Brasil – contexto de la migración internacional

Brasil es tradicionalmente un país de inmigración. Desde el inicio del siglo XX ha recibido más de cuatro millones de inmigrantes, principalmente de Europa y también de Japón; estas cifras no toman en cuenta, los que llegaron en el periodo colonial ni la migración forzada de africanos que se prolongó hasta finales del siglo XIX.

Sin embargo, desde mediados de 1980, cuando la crisis de la deuda externa golpeó al país hubo un incremento en la emigración. En el 2007, el Ministerio de Relaciones Exteriores estimó en tres millones de personas el tamaño de las comunidades brasileñas en el exterior.

Este movimiento ha disminuido desde el 2008, gracias a una combinación de un período de fuerte desarrollo económico y social en Brasil y el comienzo de la crisis financiera que afectó a varios países donde se radicaron brasileños. Esto llevó, por primera vez, a un proceso de retorno de brasileños. Además, la mejor situación económica en Brasil en comparación con la crisis existente en muchos países, después de varios años, ha contribuido al reciente aumento de la inmigración.

Las políticas migratorias en Brasil están basadas en el respeto integral de los derechos fundamentales de los migrantes, independientemente de su situación migratoria. Sin embargo, en los últimos años, el centro de la política brasileña con respecto a la migración, ha sido de ver a los migrantes como sujetos con derechos mientras que la visión de los años 70 y 80, centraba la política de inmigración en el tema de la seguridad nacional.

Situación en Haití

Como se sabe, Haití, el país más pobre de las Américas, sufrió un sismo de gran magnitud en enero de 2010, matando más de 200.000 personas y dejando a más de un millón desalojadas.

En el momento del terremoto, Brasil tenía un importante rol en Haití, ya que coordinaba la misión enviada por las Naciones Unidas (MINUSTAH) con el fin de estabilizar el país.

Brasil no había tenido migración de haitianos hasta el momento. Sin embargo, después del sismo, una ola migratoria empezó desde Haití hacia Brasil.

Nuestra suposición es que el contacto con los militares y civiles brasileños además del estrechamiento del intercambio cultural entre los países ha permitido intensificar los lazos entre Brasil y Haití y contribuido a que los haitianos identificaran a Brasil como país de destino.

Refugio e inmigración

Inicialmente, los haitianos llegaron por vía aérea a Ecuador y a Perú. Después hicieron el largo viaje a través de la selva amazónica hacia las ciudades brasileñas de Tabatinga, en el estado de Amazonas, y Assis Brasil, en el estado de Acre.

Estos migrantes llegaron a Brasil sin visa de entrada, presentándose estratégicamente como refugiados, para así regularizar su estadía en territorio brasileño.

Tomando en cuenta la situación específica de los haitianos, el gobierno de Brasil buscó examinar su situación a partir de dos órganos colegiados: el Comité Nacional para los Refugiados (CONARE), para que reconociera el del status de refugiado, , y , el Consejo Nacional de Inmigración (CNIg) para la concesión de visados especiales de residencia a los inmigrantes.

Aunque el caso haitiano no entraba dentro de lo establecido en la Convención de la Organización de las Naciones Unidas de 1951 sobre el estatuto de los Refugiados (ratificada por Brasil), no se podía decir que la migración haitiana en el post-terremoto fuera una típica migración económica.

La mayoría de los inmigrantes haitianos tuvieron pérdidas específicas en el terremoto: ya sea su casa, su familia, sus medios de vida, la escuela en donde estudiaban, etc. Con el país paralizado, muchos decidieron emigrar.

El Gobierno de Brasil trató esta situación como especial, y la solución encontrada fue la remisión de casos de parte de CONARE al CNIg para su análisis como "situación humanitaria".

El CNIg es un órgano colectivo que tiene por mandato la construcción de la política brasileña de inmigración por medio del diálogo social. En él actúan nueve ministerios, cinco centrales sindicales, cinco confederaciones

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empresariales y un representante de la comunidad científica, además de órganos de la sociedad civil que obran junto a los inmigrantes. Después de un largo debate en busca de un consenso, el CNIg consideró que la situación de los haitianos debía ser tratada como atención humanitaria y decidió conceder visados especiales para ellos.

Crisis en la frontera – Exploración – Tráfico de inmigrantes

De noviembre de 2010 a octubre de 2011, el flujo de haitianos se mantuvo relativamente constante. Sin embargo, entre finales de 2011 y principios de 2012, hubo un aumento exponencial en la llegada de haitianos. En enero de 2012, había alrededor de 2.000 haitianos en las pequeñas ciudades fronterizas de Brasil esperando poder registrarse como solicitantes de refugio. Hubo un colapso en la capacidad de acogimiento a los inmigrantes en estas ciudades: no había ni alojamiento, comida, ni atención médica suficiente para todos.

Por otro lado, comenzaron a llegar informaciones sobre la existencia de redes de intermediarios (coyotes) que cobraban a los haitianos para venir a Brasil. También hubo reportes de robos, agresiones y violencia contra las mujeres haitianas practicadas por estos coyotes.

Interrupción de los flujos migratorios en la frontera

En enero de 2012, el panorama era el siguiente: a) un colapso en los sistemas de acogida organizados en las ciudades fronterizas por la presencia masiva de haitianos, b) denuncias de violencia y abuso y la existencia de redes de coyotes en la frontera, c) la distorsión del Instituto del refugio, que fue la forma utilizada para llegar a Brasil, y d) la exposición de los haitianos a un largo y penoso viaje a través de la selva amazónica, sometiéndolos a grandes riesgos.

Sin embargo, Brasil consideraba que la demanda de inmigración de los haitianos era una realidad, ya que estaban tratando de sobrevivir fuera de un Haití devastado.

Teniendo en cuenta estas cuestiones, el Gobierno decidió desestimular el flujo de haitianos por frontera terrestre. Sin embargo, decidió crear un canal especial de migración, una visa especial de residencia otorgada directamente en la Embajada de Brasil en Puerto Príncipe.

Después de estas medidas y también por la cooperación con el Gobierno de Perú, desde febrero de 2012, los registros de haitianos recién llegados por la frontera con ese país han disminuido considerablemente.

Creación de visa humanitaria

El 12 de enero de 2012, el CNIg decidió crear una visa especial para los haitianos, nombrada "Visa Humanitaria". Esta visa puede ser emitida a los haitianos que viven en Haití y no tienen antecedentes penales. No hay requisitos respecto a la titulación académica o profesional, o la existencia de un contrato de trabajo previo. La visa es válida por cinco años, después de los cuales los haitianos tendrán que demostrar que tienen medios de subsistencia en Brasil.

Esta visa humanitaria se limita a 1.200 familias haitianas al año. Hasta el 15 de mayo, poco más de 235 familias habían solicitado y obtenido la visa.

Junto con la creación de la visa humanitaria, el CNIg también decidió conceder la residencia en Brasil a los cerca de 5.500 haitianos que ingresaron por la frontera terrestre hasta el 12 de enero 2012.

Empleo en Brasil

Los datos muestran que más del 90% de los haitianos que han llegado a Brasil están trabajando.

La situación actual en Brasil es de pleno empleo en diversas áreas del mercado de trabajo. Por lo tanto, los haitianos tuvieron una cálida acogida en varias ciudades brasileñas.

Los datos, sin embargo, indican que el perfil educativo de los haitianos que llegaron a Brasil es superior a la media de la población haitiana. El 60% tiene por lo menos una escuela secundaria incompleta. Esto significa que los que llegaron son los que tuvieron más oportunidades incluyendo la capacidad para recaudar dinero para pagar el viaje a Brasil.

Consideraciones finales

El caso de los haitianos en Brasil contiene una serie de cuestiones que son importantes dilemas experimentados por varios países que tratan con el fenómeno de la migración internacional, como el control de fronteras, la migración económica, la política de refugiados, la política de inmigración, la lucha contra la trata de personas y el tráfico de migrantes, la construcción de esquemas de acogida, integración e inclusión en el mercado laboral.

Además, el estudio del caso de Haití incorpora nuevos desafíos en términos del conocimiento de la migración internacional, como son los temas de los migrantes ambientales y los desplazados causados por las grandes tragedias.

El enfoque brasileño buscó tratar el problema de la migración haitiana con una visión abierta y desde una perspectiva de solidaridad humanitaria. La creación de un nuevo canal de migración especialmente para los haitianos mantuvo por un lado una actitud solidaria con el pueblo de Haití, y por otro lado, desalentó la migración indocumentada y detuvo el tráfico ilícito de migrantes.

Protecting and assisting citizens abroad: Republic of Korea's policy landscape

Lee Young-ho[1]

The world appears to be growing more dangerous by the day. Aside from man-made disasters such as terrorism and war, natural calamities seem to be occurring at a larger scale. Yet more Koreans continue to venture overseas, with 7 million living abroad and 13 million travelling each year. This article will discuss the Republic of Korea's basic crisis response system, preparedness measures and other crisis management mechanisms, with a particular view to assisting Korean nationals affected by crises in other countries.

The Korean crisis response system

Assistance and outreach to Korean nationals abroad has become an increasingly important aspect of the work of the Government of the Republic of Korea. As part of the Ministry of Foreign Affairs and Trade, a division is dedicated to Overseas Korean Nationals Protection and Crisis Management.

The Ministry has placed emphasis on making its consular system more effective and accessible for Koreans faced with crises and difficulties while abroad. As an example of one of the services, Korean diplomatic missions establish contracts with selected local lawyers through the Legal Advisory Assistance programme to provide Koreans involved in incidents with information and advice on the local legal system. Diplomatic and consular missions are also charged with ensuring the welfare, protection and safety of detained Koreans abroad, including through regular visits to the detention facilities and health checks.

As diplomatic representation cannot be guaranteed everywhere, the Consular Assistance Programme, established in 2007, has served to broaden the network of consular contact points across 47 countries dedicated to providing assistance and services to Koreans overseas. To further expand access to consular assistance, the Ministry's Crisis Response System also includes a Consular Call Centre which provides 24-hour consultation services to Koreans in need of consular assistance. In 2011 alone, the Centre handled more than 240 incoming calls.

In some cases, financial aid can help resolve some of the predicaments that Korean nationals find themselves in while abroad – the Rapid Overseas Remittance System provides assistance to Korean travellers who are in urgent need of money due to robbery, loss of possessions or other unforeseen circumstances. In 2011, there were 536 users, and about USD 700,000 was transferred. Emergency Financial Assistance is also available for more dramatic circumstances, including for emergency supplies in cases of natural disasters, for bringing home Korean nationals who require special attention or for assistance in the funeral services for nationals without family.

For more serious crises, the Ministry established the Rapid Deployment Teams in 2005, consisting of trained experts who are able to deploy within 24 hours of a large-scale incident abroad that has affected Korean nationals. Team members are selected from a reserve pool of Foreign Ministry staff in the Republic of Korea as well as staff at Korean diplomatic missions. In 2011, for example, Rapid Deployment Teams were dispatched on four separate occasions: in a rescue mission for Korean sailors on board an abducted ship; to assist Korean nationals in the aftermath of the earthquake in New Zealand; to support the evacuation of Koreans from Libya; and in the wake of the earthquake and tsunami in Japan.

In addition to the response mechanisms detailed above, the Ministry has also implemented a range of services aimed at preventing certain incidents and minimizing risks for Koreans travelling or residing abroad. These include a Travel Advisory System, Safe Travel Campaign, traveller registration system and dissemination of safety information via text messages.

Lessons learned from the evacuation of Koreans during the Libya Crisis

The 2011 Libya crisis tested the Korean system for crisis management on behalf of Korean nationals abroad. Prior to the outbreak of the fighting in Libya, there were 1,460 Korean nationals residing and working there, yet only nine Ministry staff, including four diplomats. As the crisis intensified, the Government of the Republic of Korea started a response operation to support the evacuation of Koreans in Libya who were in need of protection. However, the small number of officials

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available to assist Korean nationals and to organize an evacuation proved a serious challenge.

In order to make the evacuation possible, two chartered planes, a warship and a large number of vehicles and commercial ships were deployed, with contributions from private companies. With support from IOM, the Korean Embassy dealt with administrative procedures at harbours and airports, while the Rapid Deployment Team dispatched by the Foreign Ministry in Seoul took charge of issuing passports or travel certificates, and of distributing emergency supplies.

The experience in Libya generated a number of important lessons regarding the reality of a crisis situation and the Korean response mechanisms. It also prompted the Ministry to reflect on the challenges that may arise in future response operations in crises:

- What if a diplomatic mission had not existed?
- What if similar incidents occur in countries without a Korean mission?
- How can administrative procedures be simplified in times of emergency?

Memorandum of Understanding with IOM

Aware of a growing mismatch between the number of Korean nationals travelling and living abroad and the extent of Korean diplomatic and consular representation, the Government of the Republic of Korea sought international cooperation to facilitate emergency evacuation of overseas Koreans and to provide related services in locations where there is no Korean representation.

The Korean Government took note of IOM's vast network of field offices – 450 offices, as compared to the Republic of Korea's 158 diplomatic missions – its skilled staff, and its expertise in providing services to migrants. The country felt it had much to learn from IOM's long-standing experience and proven expertise in migration affairs.

Considering these strong points, the Korean Government decided to conclude a Memorandum of Understanding (MOU) with IOM. The MOU was signed on 8 June 2012 in Seoul between Korean Foreign Minister Kim Sung-Hwan and IOM Director General William Lacy Swing. It "provides a framework between [the Republic of] Korea and IOM for cooperation and facilitation of the emergency evacuation [of] and related services [for] Korean nationals, including, but not limited to, locations where no Korean Foreign Ministry's representation exists." With this MOU, IOM provides cooperative services to Korean nationals upon the request of the Korean Government, such as:

- arrangement of in-country transportation to the airport of departure;
- organized international evacuation transportation by air, land or sea;
- facilitation of travel documents and documentation for transit countries;
- fitness-to-travel medical checks;
- assistance to evacuees with departure formalities, and the like.

The MOU foresees that the Foreign Ministry will reimburse IOM for all direct operational costs, and a service fee will be charged to each service request. The Ministry will then charge each national who received assistance.

Conclusion

International cooperation is critical in enhancing crisis response capacity and creating more cooperative migration policy. In the past, the Republic of Korea could only communicate with the country concerned on a bilateral basis, but this communication can be seriously hampered if the country is engulfed in crisis. Thanks to the MOU with IOM, solutions can be sought on a multilateral scale.

The MOU between the Republic of Korea and IOM opens the possibility for shared emergency response and more practical and efficient cooperation. It could become a useful reference for strengthened cooperative mechanisms in migration policy, led by IOM and supported by its Member States and other interested parties.

Les enseignements à tirer de la gestion de la crise libyenne par la République du Tchad

Moussa Mahamat Dago[1]

Le Tchad partage avec la Libye plus de 1000 km de frontière commune et entretient avec ce pays des relations très anciennes, nourries par des échanges humains et commerciaux eux aussi très anciens, en tout cas antérieurs à la pénétration coloniale dans les deux pays. Les vastes espaces désertiques et montagneux n'ont jamais constitué un obstacle à ces échanges.

Ainsi, tout ce qui se passe dans un des pays affecte plus ou moins intensément l'autre. Il en est ainsi de la conquête coloniale italienne au 19ème siècle, qui a poussé des centaines de Libyens à fuir leur pays pour s'installer au Nord et au Nord-Ouest du Tchad. Tout comme ces milliers de Tchadiens qui se sont installés en Libye pour des raisons économiques ou à cause de l'insécurité qui régnait dans les régions du Nord du pays.

En tout cas, ces échanges se sont intensifiés à partir des années 70, en particulier dans le sens Tchad-Libye. Les Tchadiens se sont massivement rendus en Libye pour différentes raisons, notamment:

- La sécheresse, qui a sévi avec beaucoup de vigueur dans les régions Nord, Centre et Est du Tchad et qui s'ajoutait à la pauvreté et au chômage;
- L'insécurité, entretenue par les groupes rebelles qui opéraient dans ces régions et alimentée en partie par le régime libyen de l'époque (c'était la période de l'occupation de la bande d'Aouzou par la Libye);
- La prospérité de la Libye, qui nécessitait une main d'œuvre de plus en plus abondante.

L'un dans l'autre, la population tchadienne émigrée en Libye varie aujourd'hui entre 200 et 500000 personnes. Il est difficile de donner un chiffre exact, car les enfants de ceux qui se sont installés en Libye depuis 20, 30 ou 40 ans ne se sont pas enregistrés auprès des services consulaires de l'Ambassade.

Ils n'ont pas eu la nationalité libyenne (le droit du sol n'existe pas dans ce pays) et ne peuvent donc pas bénéficier des avantages qui y sont liés ; ils ne sont pas en règle non plus avec le pays d'origine de leurs parents.

En réalité, la stabilité dont jouissait ce pays depuis des décennies, la prospérité induite par l'importante production pétrolière et une certaine affinité culturelle (la plupart des Tchadiens sont d'origine arabe ou parlent l'arabe) ont fait que ces derniers n'ont jamais songé à quitter ce pays un jour (surtout dans ces conditions) et encore moins à préparer leur retour.

Contrairement aux autres ressortissants des pays africains qui vont en Libye pour y travailler et rapatrier argent et biens, les Tchadiens étaient installés. Par conséquent, ils étaient les plus affectés par la crise libyenne.

Ainsi, dès le déclenchement de cette crise, le Gouvernement a mis en place un Comité présidé par le Premier ministre, avec comme Vice-Président le Ministre des Affaires étrangères.

Ce Comité est appuyé par un Comité technique présidé par le Secrétaire général du Ministère des Affaires Etrangères et comprenant tous les départements concernés d'une manière ou d'une autre par le retour des Tchadiens : Défense, Sécurité publique, Administration du Territoire, Santé, Affaires sociales, etc. Ce Comité a pour mission :

- d'étudier et de proposer au Gouvernement des mesures en vue de sécuriser les frontières ;
- d'identifier les sites devant accueillir les rapatriés ;
- de mobiliser les moyens en vue de faire face aux urgences humanitaires.

Ainsi, des dispositions ont été prises très rapidement pour gérer les premières arrivées. Des sites d'accueil provisoires ont été identifiés et aménagés à N'Djamena et à Faya. Le Gouvernement a affrété deux vols pour rapatrier les personnels diplomatiques et leur famille ainsi que les étudiants. Il a loué des camions pour transporter ceux des Tchadiens vivant au Sud de la Libye et qui ne peuvent être évacués que par voie terrestre, à cause de l'embargo décidé par les Nations Unies.

Face aux coûts élevés que nécessitent ces évacuations, le Gouvernement a demandé à l'OIM de prendre le relais.

Ainsi, les ressortissants tchadiens en Libye, munis de pièces d'identité, de laissez-passer ou quelquefois sans aucun document, sont accueillis aux frontières

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tunisiennes (Ras Jider ou djerba) et égyptiennes (Salloum ou Le Caire) par une équipe de l'OIM et des agents de l'Ambassade du Tchad à Tripoli et au Caire. Ils sont identifiés et enregistrés avant d'être embarqués pour le Tchad.

L'aéroport de N'Djamena accueillait quotidiennement jusqu'à quatre vols en provenance de ces pays. A N'Djamena, les équipes de l'OIM reçoivent les rapatriés et les acheminent vers les centres de transit aménagés à cet effet.

Après quelques heures ou quelques jours, l'OIM affrète des moyens de transport pour les convoyer jusque dans leur région ou village d'origine, et pays d'origine pour les étrangers. La prise en charge du point de vue alimentaire, sanitaire et psychosocial dans les centres de transit est faite conjointement par les agents du Ministère des affaires sociales et le personnel de l'OIM.

S'agissant maintenant des conséquences et des leçons à tirer de toute l'opération qui a une dizaine de mois, nous avons relevé :

D'abord au niveau des rapatriés :

- Traumatismes causés par la violence de la crise, la perte des personnes connues et des biens: maisons, argent, mobilier, emplois, etc., et un avenir compromis ;
- Pression exercée sur les communautés d'accueil, elles-mêmes aux prises avec l'insécurité alimentaire, les problèmes d'infrastructures d'accueil et de santé ;
- Choc culturel : la grande majorité des rapatriés trouve un mode de vie différent, un pays et une administration de tradition francophone ;
- Chômage des rapatriés du fait d'une absence de possibilités d'emplois ;
- Familles privées des fonds transférés par les migrants.

Au début de cette année, à la demande du Gouvernement, l'OIM a effectué une mission d'évaluation des esoins des rapatriés, en vue d'élaborer des programmes de réinsertion mais également concernant l'impact des retours massifs sur les communautés d'accueil.

Sur ce dernier point, il ressort que les rapatriés ont rencontré de grosses difficultés dans leurs communautés d'accueil, tant celles-ci manquent de tout : eau potable, santé, école, etc., à telle enseigne que nombreux sont ceux qui sont repartis en Libye.

S'agissant de la coordination des activités liées à la gestion des migrants, elle a été déterminante dans le succès des opérations menées pendant dix mois. Les différents services de l'Administration tchadienne ont collaboré étroitement avec l'OIM et les autres intervenants à N'Djamena et en province comme au niveau des ambassades, dans l'accueil, l'installation et la prise en charge des rapatriés ; ce qui a permis aux opérations de rapatriement de se dérouler dans de bonnes conditions jusqu'à la fin.

Les services de sécurité, de la douane, et de manutention de l'aéroport de N'Djamena ont fait preuve d'un dévouement et d'une disponibilité exemplaires.

Les gouverneurs des régions, les préfets, les responsables militaires des zones d'accueil et de transit ont mis à disposition leur moyens de transport et de communication pour aider des rapatriés égarés ou en détresse.

Les services de l'aviation civile sollicités à toute heure et pendant les jours non ouvrables accordent dans l'heure qui suit (parfois par téléphone) les autorisations de survol et d'atterrissage aux avions transportant les Tchadiens.

Les services de sécurité, des douanes, les entreprises privées de manutention de l'aéroport de N'Djamena ont fait preuve d'un dévouement et d'une disponibilité exemplaires.

En tout cas, chacun avait conscience qu'il contribuait à une action humanitaire, qui plus est en faveur de compatriotes qui ont tout perdu.

La bonne collaboration avec les agences des Nations Unies ou non gouvernementales a contribué également au succès des opérations de rapatriement.

Le Gouvernement s'est d'abord adressé à l'OIM, eu regard à son mandat. Mais, chemin faisant, il nous avait semblé percevoir des frictions et conflits de compétence entre l'OIM et certaines organisations, en particulier le HCR. Nous avions été amenés à demander, parfois fermement, aux uns et aux autres de dépasser leurs querelles pour s'occuper de l'essentiel.

C'est ainsi que le Coordonnateur humanitaire des Nations Unis au Tchad a mis en place une "Task Force", une sorte de coordination des différentes organisations intervenant dans la gestion et la prise en charge des migrants qui se réunit chaque semaine en présence d'un représentant du Ministère des Affaires sociales.

Il a été précisé qu'il s'agit bien d'une crise migratoire et non de réfugiés. Le rôle de chef de file de l'OIM dans la gestion de cette crise a été réaffirmé, et chacun a été invité à apporter son concours, dans son domaine de compétence, aux différentes phases des opérations. C'est ainsi qu'a été confiée au HCR la mission de s'occuper des migrants étrangers transitant par le Tchad pour une longue durée, notamment les Somaliens et les Erythréens.

L'autre remarque que nous avons faite, c'est la réticence de l'OIM à collaborer avec l'armée. Nous l'avions senti lorsqu'il s'agissait d'avoir recours à un avion de l'Armée tchadienne pour aller chercher des rapatriés (essentiellement des femmes et des enfants) piégés à l'extrême nord du pays, suite à une panne de leur véhicule.

Nous comprenons qu'il s'agit là du respect du principe de neutralité cher à l'OIM et à tous les organismes à caractère humanitaire. Mais, face à certaines situations d'urgence, cette rigidité ne peut se justifier. D'autant que dans le cas d'espèce, il ne s'agit pas d'un conflit opposant deux Etats.

Le principal enseignement que nous pouvons tirer, c'est que l'appui d'organisations telles que l'OIM a été déterminant dans l'évacuation des ressortissants tchadiens. Près de 250 rotations d'avion, environ 200 camions affrétés pour évacuer ces derniers ; l'assistance apportée aux migrants de retour dans les différents centres de transit disséminés dans un territoire vaste de plus d'un million de Km². Assurément, le Trésor public tchadien n'aurait pas pu supporter une telle charge financière.

Il reste que les questions soulevées par l'après-crise n'ont pas encore eu de réponse. Près de 100.000 personnes cherchent à s'insérer dans le tissu socioéconomique de leur pays. Avec toutes les difficultés d'adaptation que cela comporte pour une population de migrants souvent jeunes, plongés dans un environnement qui leur est étranger.

Il y a la grande majorité de Tchadiens qui sont restés en Libye, accrochés à leur biens, qui n'ont aucune perspective au Tchad et qui continuent d'endurer l'hostilité ambiante en Libye. Là également, les organisations internationales et non gouvernementales ont un rôle à jouer.

Atención y reparación integral a las víctimas del desplazamiento forzado en Colombia

Paula Gaviria Betancur[1]

Uno de los mayores impactos marcados por el conflicto armado que se ha extendido por varias décadas en Colombia es el desplazamiento forzado de millones de personas. Por lo general, acompañan al desplazamiento forzado otras graves violaciones a los derechos humanos, como masacres, torturas, violencia sexual, reclutamiento forzado y despojo de tierras. Todo esto ha ocasionado daños de tipo individual, como la pérdida de vidas humanas, secuelas emocionales y fisiológicas, interrupción de la actividad productiva, y daños de tipo colectivo, como la pérdida de redes comunitarias y de prácticas culturales.

El Estado colombiano ha recorrido un largo camino en la búsqueda de respuestas integrales que sean efectivas y reconozcan esta compleja situación. Desde 1997 se instituyeron medidas para la atención y asistencia a la población en situación de desplazamiento con el objetivo de mitigar temporalmente sus efectos. Las medidas de atención se extendían a aquellas personas en quienes persistían las condiciones de vulnerabilidad relativas a la subsistencia mínima y asociadas al desplazamiento forzado. Sin embargo, en el 2004 la Corte Constitucional encontró fallas estructurales en el sistema de atención a la población desplazada y determinó que existía una violación generalizada a los derechos de la población en situación de desplazamiento. Hacia 2008 tuvieron lugar otras normas que pretendían proporcionar medidas de reparación a las víctimas, pero su alcance era meramente económico y basado en un acto de solidaridad por parte del Estado y no de su responsabilidad y deber especial de protección por las graves violaciones a los derechos humanos cometidas.

Con el impulso de organizaciones de las víctimas y de la sociedad civil, en el gobierno del Presidente Juan Manuel Santos Calderón se decidió destinar mayores esfuerzos para restablecer los derechos de las víctimas del conflicto armado y dar un paso más allá del modelo de atención a la población desplazada para construir una política pública basada en el reconocimiento y en el derecho a la reparación integral. Este giro significativo se concreta en la expedición de la Ley 1448 de 2011, mejor conocida como la Ley de Víctimas y Restitución de Tierras. Esta Ley, aprobada con un alto respaldo político y social, refleja el consenso nacional en que la construcción de una paz duradera, la superación del conflicto y la recuperación de los lazos de confianza entre el Estado y sus ciudadanos requiere que las víctimas ocupen el centro de la acción estatal.

No son pocos los retos que existen al momento de implementar una política pública que busca transformaciones tan profundas para un país entero y sobretodo para quienes han sufrido de forma directa los horrores de la guerra y que se encuentran en extrema pobreza y marginalidad. Sin lugar a dudas el mayor reto para la implementación exitosa de este nuevo marco legal radica en la permanencia del conflicto interno y la capacidad de los actores armados de causar daños en la población civil.

Actualmente se encuentran inscritas en el Registro Único de Víctimas 5'832.934[2] personas, de las cuales 4'613.796 personas son víctimas del desplazamiento forzado y representan más de 900 mil900.000 hogares. Del total de personas, cerca del 28% son niños y niñas menores de 14 años mientras que el 5% son personas mayores de 60 años, el 12% pertenece a un grupo étnico, el 51% son mujeres, de las cuales el 22% son cabeza de hogar. La continuación de las acciones armadas dejan claro que estas cifras pueden aumentar cada día y que quienes ya fueron victimizados tienen temor o encuentran enormes obstáculos para acceder a las políticas de atención y reparación.

La implementación de la Ley de Víctimas y Restitución de Tierras parte de importantes aprendizajes. A continuación se exponen algunas de las apuestas estratégicas y las herramientas para desarrollarlas.

Reparación para la reconciliación

Uno de los avances más valiosos que contiene la Ley de Víctimas y Restitución de Tierras es el reconocimiento de la complejidad de las violaciones de derechos humanos sin importar el actor armado que la perpetró. Así, además del desplazamiento forzado, se reconocen otras graves violaciones a los derechos humanos y al derecho internacional humanitario asociadas a este crimen. También se reconoce la dimensión individual

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[2] Cifras de la Unidad para las Víctimas, Junio de 2012.

y colectiva de la violación. Por ejemplo, en el caso de niños y niñas son incluidos como víctimas directas y no como beneficiarios de sus padres, como suele suceder en experiencias similares, y también pueden ser sujetos de reparación colectividades como grupos sociales, organizaciones políticas y sindicales y comunidades étnicas.

La apuesta del gobierno nacional es proporcionar una reparación que sea significativa para las víctimas. A través de los programas de atención y reparación se busca que las víctimas se sientan reparadas, por lo que la medida de reparación debe responder de manera adecuada a la condición particular de cada víctima. Si bien la masividad del caso colombiano y la heterogeneidad de intereses dentro de las mismas víctimas representan un desafío en este sentido, se está trabajando en fórmulas que permitan alcanzar este objetivo. Hacen parte de la estrategia implementada desde la Unidad para la Atención y Reparación Integral a las Víctimas la habilitación de rutas de acceso a los programas que distingan las condiciones de género, edad, origen étnico y discapacidad, el entrenamiento especializado para funcionarios públicos, la atención psicosocial, la utilización de lineamientos para una intervención que no re victimice ni exacerbe los daños y la puesta en marcha de mecanismos de participación para que las perspectivas de las víctimas tengan impacto en el diseño, implementación y evaluación de las medidas y programas.

Las víctimas se encuentran en regiones apartadas y enfrentan enormes dificultades para acceder a los programas, por lo que la implementación de la Ley de Víctimas y Restitución de Tierras gira en torno a un esquema descentralizado y desconcentrado en el que los gobiernos locales juegan un rol determinante. La implementación de la Ley se ha acompañado de una estrategia de fortalecimiento de las entidades territoriales así como de un sistema que asegure la transferencia de recursos técnicos y financieros a las entidades territoriales. El gobierno nacional destinó 3,4 mil millones de dólares EE.UU. para financiar la implementación de la Ley de Víctimas y Restitución de Tierras durante los 10 años de su vigencia.

Articulación y coordinación para la atención y reparación

Una respuesta efectiva a las víctimas presupone el funcionamiento articulado y eficaz de las entidades públicas. Bajo el derrotero de la centralidad de las víctimas en la acción estatal, la mayor parte de las entidades oficiales comparten algún tipo de responsabilidad en la atención y reparación a las víctimas. Como instancia de planeación y coordinación se creó un Sistema Nacional de Atención y Reparación Integral a las Víctimas constituido por 37 entidades públicas del nivel nacional y mesas de participación de víctimas encargadas de

formular o ejecutar los planes, programas, proyectos y acciones específicas, que tiendan a la atención y reparación integral de las víctimas. La Unidad para la Atención y Reparación Integral a las Víctimas gestiona y coordina este Sistema Nacional.

Las entidades estatales y gubernamentales se encuentran trabajando en la adopción de un lenguaje común para que sin importar la puerta que toque una víctima encuentre una respuesta efectiva. Actualmente se construye un Sistema de Información Integrado para facilitar el proceso de formulación, implementación y seguimiento de los programas de atención y reparación. Una pieza importante de dicho Sistema de Información lo constituye el Registro Único de Víctimas, herramienta técnica que facilita la identificación de la población víctima, y la Red Nacional de Información, que facilita el intercambio e interoperación de la información y la generación de insumos para que todas las entidades encargadas de la atención y reparación puedan cumplir de forma adecuada sus tareas.

Como resultado de una construcción colectiva y participativa se expidió el Plan Nacional para la Atención y Reparación, el cual sirve de carta de navegación para todas las entidades encargadas de la atención y reparación a las víctimas. Este Plan Nacional contiene el plan de financiamiento de los programas, los lineamientos generales vinculantes para todas las entidades, las metas e indicadores estratégicos y los mecanismos de seguimiento al cumplimiento.

Integralidad de la acción estatal: un modelo que conecta la atención humanitaria con la reparación integral

La integralidad en la atención a las víctimas consiste en proporcionar atención humanitaria al momento de la ocurrencia del hecho y conectar a la víctima en una ruta de reparación que la empodere para emprender la reconstrucción de su proyecto de vida. A través de una ruta de reparación individual se brinda acompañamiento y orientación permanente a las víctimas a través de un funcionario que sirve de enlace para hacer seguimiento a su caso particular y asegure que el plan de reparación que construyan de forma conjunta se materialice dentro de la oferta estatal.

De esta manera, el suministro de ayuda humanitaria a las víctimas del desplazamiento forzado que puede consistir en asistencia en salud, educación, asistencia funeraria, identificación, alimentación, reunificación familiar y orientación ocupacional, se desarrolla de manera coordinada con el desarrollo de las medidas de reparación a las que haya lugar.

A través de un Programa de Acompañamiento al que las víctimas ingresan de forma voluntaria, se habilitan varias modalidades para que las víctimas inviertan la suma

de dinero que se les entrega a título de indemnización administrativa. El programa contiene incentivos para que las víctimas usen los recursos que reciben en planes de educación, creación o fortalecimiento de empresas productivas y proyectos que incorporen tecnologías de la información y comunicación. En el caso de las víctimas de desplazamiento forzado, se brinda la alternativa de adquisición o mejoramiento de vivienda nueva o usada o la adquisición de inmuebles rurales a través de la oferta estatal.

En el caso de la población en situación de desplazamiento forzado, el gobierno nacional fijó como estrategia priorizar la implementación conjunta de los programas de restitución de tierras, reparación colectiva, rehabilitación del tejido social, retornos, reubicación e inclusión social. De esta manera, la concentración de varias medidas proporciona un impacto mayor y aseguran la sostenibilidad del proceso de reparación, especialmente en el caso de zonas y grupos afectados por el desplazamiento forzado.

Para conectar en la práctica la atención humanitaria con las medidas de reparación se ha dispuesto la creación de Centros Regionales de Atención y Reparación que reúnen la oferta institucional. Además, se cuenta con Unidades Móviles de Atención que se desplazan a aquellas zonas apartadas en donde no se cuenta con la infraestructura de atención. También se encuentran en operación un centro telefónico de contacto y orientación que brinda información permanente. A través de estas estrategias sólo entre junio de 2011 y junio de 2012 se han atendido a 2'808.946 solicitudes y proporcionado atención humanitaria en los primeros seis meses de este año a 364.288 hogares. La meta para el año 2012 consiste en reparar 110.380 víctimas, de las cuales el 34% ya han sido reparadas al 30 de junio de 2012.

Ni una víctima más

El gobierno nacional es consciente de que el programa de reparación será efectivo en la medida en que se rompa el ciclo de victimización y se transformen las condiciones que permitieron la violación masiva y sistemática de derechos. En ese sentido el Sistema Nacional de Atención y Reparación trabaja en coordinación y de manera complementaria con el Sistema Nacional de Derechos Humanos en el componente de Prevención de Violaciones de Derechos Humanos a través de varios mecanismos de identificación de riesgos y de coordinación interinstitucional para la prevención en escenarios tales como la Comisión Intersectorial de Alertas Tempranas, el Comité de Evaluación y Recomendación de Medidas y la Comisión Intersectorial de Prevención del Reclutamiento y Utilización de Niños, Niñas y Adolescentes.

Adicionalmente, a través de los espacios interinstitucionales creados por la Ley de Víctimas y Restitución de Tierras, como el mencionado Sistema Nacional de Atención y Reparación y de herramientas como la Red Nacional de Información, la Unidad para la Atención y Reparación Integral trabaja con los gobiernos locales en la creación de planes locales de contingencia y opera un sistema de monitoreo de riesgos que facilita la identificación y análisis de las causas de graves violaciones y permite la focalización de las acciones dirigidas a reducir el riesgo de victimización. La Unidad también realiza misiones de prevención de riesgos directamente en el terreno en las cuales verifica las condiciones del contexto y del riesgo de victimización y contribuye a la implementación de las recomendaciones impartidas por otros organismos.

Seguimiento y evaluación: goce efectivo de derechos

Una de las dificultades que se busca superar con la Ley de Víctimas y Restitución de Tierras es la necesidad de establecer los criterios bajo los cuales se determina cuándo un hogar desplazado supera la situación de desplazamiento y alcanza una situación de consolidación y estabilización socioeconómica. Dichos criterios son necesarios para establecer el alcance de la obligación del Estado de garantizar los derechos de la población desplazada mediante políticas específicas que atiendan a su vulnerabilidad como víctimas del conflicto, facilita el seguimiento y evaluación de la política de atención a la población desplazada y sobretodo, ayuda a medir el impacto de la política de desplazamiento sobre el goce efectivo de los derechos de la población desplazada.

Es importante notar que la figura de la cesación de la condición de vulnerabilidad que se aplicaría principalmente a las víctimas del desplazamiento forzado y que constituye la mayor parte de las víctimas en Colombia, no las despoja de su derecho a la reparación y su acceso a la restitución de tierras, sino que permite diferenciar a aquella población en situación de desplazamiento por su vulnerabilidad requiere de ayuda humanitaria y aquella que no la necesita. Actualmente el gobierno nacional se encuentra elaborando la metodología de evaluación de la restitución de goce efectivo de derechos para lo cual tiene en cuenta los estándares trazados por el derecho internacional y la Corte Constitucional colombiana. Esta metodología se aplicaría una vez cada dos años y se aplicaría por primera vez hacia el 2014.

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La Ley de Víctimas y Restitución de Tierras es una herramienta con gran potencial de impulsar cambios de hondo calado en la situación de millones de víctimas del desplazamiento forzado en Colombia. Las lecciones y metodologías que de esta experiencia se deriven tienen el potencial de marcar un hito en la manera en que otros Estados que enfrentan desplazamientos masivos responden a las crisis humanitarias. El gobierno

colombiano se encuentra comprometido con el reconocimiento y la reparación de las víctimas, porque cada colombiano y colombiana es una pieza clave en la construcción de la paz y la reconciliación.

Sobre la Unidad para la Atención y Reparación Integral a las Víctimas

La Unidad fue creada por la Ley de Víctimas y Restitución de Tierras como la entidad encargada de diseñar, coordinar e implementar las políticas públicas de atención y reparación dirigidas a las víctimas del conflicto armado. La Unidad es una entidad del gobierno colombiano que tiene por objetivo acercar el Estado a las víctimas mediante la coordinación eficiente y acciones transformadoras que promuevan la participación efectiva de las víctimas en su proceso de reparación. Para información adicional visite: www. atencionyreparacion.gov.co.

Dealing with the consequences of article 1F of the Refugee Convention in the Netherlands: A crisis for migration policymakers and excluded asylum claimants

Joke Reijven and Joris van Wijk[1]

The drafters of the 1951 Refugee Convention believed war criminals and other perpetrators of serious crimes are undeserving of refugee protection. Article 1F of the Convention therefore stipulates that when there are serious reasons for considering that persons committed such crimes, they are to be excluded from refugee protection. Though determining whether this exclusion clause applies is challenging in itself, developing an adequate policy on how to deal with excluded persons in the post-exclusion phase proves even more complicated. This is especially the case if excluded persons cannot be *refouled* to their countries of origin because of humanitarian concerns. They continue to live in limbo; not having access to refugee protection while simultaneously not being deportable.

In this article, we describe the post-exclusion challenges faced in the Netherlands, a country which has applied the exclusion clause rather actively over the past decade. For years the question on what to do with excluded persons who find themselves in limbo has been a topic of debate in national parliament, and for years the Government of the Netherlands has been struggling to develop a coherent post-exclusion policy. In the meantime, the excluded persons have to get by living as undocumented migrants. Based on an analysis of policy documents and interviews with excluded persons themselves and experts on the topic, this article discusses the consequences of a fundamental system error in international law.

The no safe haven policy in the Netherlands

In the European context, the Netherlands is at the forefront with regard to the application of article 1F, which is based on the idea that the country should not be a safe haven for alleged criminals applying for asylum. Between 1997 and 2011, 810 asylum claimants have been excluded. Since 2001, every official of the Dutch Immigration and Naturalization Service (IND) is expected to automatically refer cases to the "1F unit" when, during the initial interviews in the asylum procedure, indications arise that there may be serious

reasons for considering that someone was involved in war crimes, crimes against humanity, acts of terrorism or other serious crimes abroad. Such indications can be statements of the asylum applicants themselves or other sources that reveal that their activities, claimed professions or positions in a group could mean their involvement in human rights violations. Currently, the majority of the excluded individuals in the Netherlands are of Afghan nationality and approximately 190 of them are still residing in the country.[2] Their exclusion is often based on a report of the Ministry of Foreign Affairs on the activities of the KhAD/WAD during the communist regime between 1978 and 1992. It concludes that all sub-officers of the KhAD/WAD rotated between various departments and were therefore personally involved in the arrest, questioning, torturing and occasional execution of suspects. The report forms the basis for the categorical exclusion of former sub-officers of KhAD/WAD. The use of the specialist report has been highly criticized, among others by UNHCR. Unique to the Netherlands 1F policy is the fact that from 2006 onward, alleged 1F offenders are automatically declared undesirable aliens, or persona non grata. This is motivated by the presumption that their presence in the Netherlands endangers public order and/or the interest of international relations. Being present in the Netherlands while having such a status is punishable by law.

Post-exclusion measures

Consistent with international obligations, the possibilities of criminal proceedings are examined first after article 1F has been applied. Preferably, the excluded person would be prosecuted in his country of origin or a third country requesting his extradition. However, barriers such as the absence of a bilateral extradition treaty and concerns with regard to the human rights record of the country of origin frequently impede extradition. Further, it does not occur often that requests for extradition of 1F excluded persons are made. For this reason, transfers to an international criminal court such as the ad hoc International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal

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for Rwanda or the permanent International Criminal Court in The Hague (ICC) also rarely occur. Moreover, according to the so-called "complementarity principle" of these courts, in the absence of an indictment by an international court, the Netherlands, as host State of the alleged perpetrator, should assess if it can domestically prosecute an excluded individual. This, however, is far from easy. The "serious reasons for considering" evidentiary standard in the administrative exclusion procedures is much lower than the "beyond reasonable doubt" standard in criminal procedure. In addition, complex, time-consuming and expensive investigations in the country of origin are often indispensable to gather further evidence to prove that the excluded person has committed the alleged crimes. Therefore, despite the availability of universal jurisdiction and the close collaboration between the immigration authorities and a specialist war crimes team of the public prosecution office, the post-exclusion measure of prosecution is largely unsuccessful.

The authorities' preferred alternative is to convince the individual and his family to voluntarily depart to their country of origin or a third country that is willing to accept them. However, voluntary return to the country of origin is often not seriously considered as an option by the excluded persons. Indeed, why voluntarily return to the country one has – often by means of paying high fees to travel agents – just fled? An additional reason for alleged 1F offenders to not consider voluntary return is that they are not eligible for financial support from the International Organization for Migration (IOM). Whereas other rejected asylum claimants may be provided with reintegration support schemes which can add up to several thousand euros, such support is not available for excluded individuals. Voluntarily departing to a third country within the European Union is often not an option either. The Dublin Regulation, signed by 26 European countries, including the Netherlands, regulates that the first country in which an individual applied for asylum will be responsible for accepting his claim. A claimant that has been excluded in the Netherlands will thus be handed over to the Netherlands when he or she applies for asylum in any of the 25 other Dublin Regulation Member States. Travelling to countries outside the European Union is also complicated since alleged 1F offenders often lack identity documents. Moreover, they may not have the financial means to obtain a visa to enter non-EU countries.

The last option available to the Netherlands Government in dealing with the excluded persons is forcible deportation. This, however, is less straightforward than it may seem. Lack of cooperation from the excluded person or grave medical concerns can, for example, complicate this process. A particularly difficult barrier to expulsion for alleged 1F offenders to overcome stems from human rights obligations under article 3 of the European Convention for the Protection of Human Rights

(ECHR) and article 3 of the Convention Against Torture which prohibit *refoulement* of individuals to torture, or inhuman or degrading treatment or punishment. The Netherlands Government is bound by article 3 of ECHR, which not only prevents forcible deportation to the country of origin but also to non-Member States of the Council of Europe, where the excluded applicants will no longer be protected against *refoulement* by article 3 of ECHR.

Living in limbo

When the public prosecution office of the Netherlands has not found sufficient starting points for a criminal investigation of an alleged 1F offender, this does not lead to a reassessment of the applicability of article 1F to his asylum claim. Nor will a failure to extradite, transfer to an international court or deport. The excluded non-prosecutable and non-deportable asylum applicants remaining in the Netherlands are not entitled to education above the age of 18, medical insurance, work, financial support and housing. Because they are generally also being declared undesirable aliens, they constantly risk being arrested and imprisoned. Prospects of an end to this limbo are grim. Currently, a minimum of 240 excluded asylum claimants still remain in the Netherlands, at least 45 per cent of whom cannot currently be deported due to article 3 of ECHR.[3]

The sections below present some of the practical consequences that excluded persons in limbo face. The data is based on in-depth interviews with 24 excluded individuals and eight experts that took place from 2011 to 2012. The experts are professionals who, through their work with former asylum claimants, became knowledgeable on the topic of exclusion. With the exception of one, all the interviewed alleged 1F offenders are male. Nineteen of them are Afghan, five Iraqi and three African. On average, Afghan individuals had remained 14 years in the Netherlands and non-Afghans 7. Most had therefore formed relatively strong ties to Netherlands society, especially when they lived with their children. The Afghan respondents are mostly in their 50s or 60s and live with their families, while non-Afghan respondents are generally in their 30s and left their family behind in their country of origin.

Awaiting decisions on ongoing procedures, the possibility of being arrested and detained at any time and the infinity of the duration of exclusion lead to great uncertainty. As one respondent mentioned,

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[3] This number, however, is fluid, since the principle of *non-refoulement* can be acknowledged and rejected over time. Kst. 19637 nr. 1547, *Het bericht dat Afghanistan wil dat Nederland onderzoek gaat doen naar oorlogsmisdadigers* (1 June 2012); Ah-tk-2011 2012 nr. 1607, *Antwoord van Minister Leers op kamervragen van Gesthuizen en Karabulut* (20 February 2012).

the consequences of the application of article 1F are perceived as administratively sanctioned prison sentences: "In my country, someone will be incarcerated 72 hours before being convicted, but... here it takes 12 years! Just because of a suspicion."

Another respondent stated: "If someone in the Netherlands kills five people, he gets maybe a 20-year prison sentence. I have been imprisoned here for almost 9 years and I never did anything wrong!"

The uncertainty impacts all areas of life: finances, housing, health and social life. Financially, the respondents claimed to have no lawful means available to earn money. They largely depend on assistance from non-governmental organizations (NGOs), friends or family members. The financial dependency on family members changes traditional roles – when when wife and children are taking care of the mostly male alleged 1F offenders, this often leads to frustration and pressure within the family. Assistance from NGOs is not guaranteed either, even when the main objective of these organizations is to assist refugee claimants. Some NGOs are unwilling to help alleged 1F offenders who lack prospects of a positive outcome of their asylum claims or they prioritize the interests of other asylum-seekers over those of allegedly criminal applicants. An alleged 1F offender's son remembered:

> The first hit came from [a Dutch NGO]. They called my father when they received a letter from IND regarding his 1F status. They told my father: "You are a 1F offender, we don't deal with that type of case." … We also asked IOM whether we could go to a third country with the entire family, but they said no.

In the Netherlands, secondary health care is not for free without medical insurance. Medical expenses can thus increase financial worries. Medical experts interviewed claim that alleged 1F offenders face many psychological problems. Being stigmatized as supposed dangerous criminals weighs heavily on the excluded. Their psychological complaints are caused primarily by their exclusion rather than by earlier traumas, which inhibits effective treatment of the latter. Moreover, respondents seem to postpone seeking medical aid. They prioritize solving problems related to work, legal procedures and social environment and only resort to medical treatment when any hope for change has disappeared. The following statement is from a man who had fallen ill during his detention:

> My doctor sent me to the hospital… I was handcuffed and they put a stick in my trousers so I couldn't bend my legs. I had to walk through the crowd with police officers left and right of me… The eye drops burned in my eyes. I asked the police: "Can you loosen the cuffs, so I can rub my

eyes?" But… they wouldn't. I became aggressive. I started to scream to the people in the corridor: "Look at me, I am a criminal, a terrorist!"

Being declared persona non grata aggravates the stigma. Contrary to other undesirable aliens, the respondents have never been convicted for an offence or crime in the Netherlands and identify themselves as regular law-abiding citizens. One interviewee said: "The label… used to be for people killing, dealing drugs and I have the same sticker."

Respondents cope with the social isolation, stigma and shame by either keeping their 1F status secret or by disclosing it strategically to the media or a few confidants in Netherlands society who, they believe, can offer support. The presence of family members in the Netherlands can provide assistance but can also be a source of tension, shame and guilt. The alleged 1F offender often feels or is held responsible for the deprivation of his spouse and children. This is because in the Netherlands, relatives of an alleged 1F offender are, on principle, not entitled to refugee or subsidiary protection if they lack independent grounds for asylum. Since 30 November 2008, however, dependants can, under certain conditions, apply for a residence permit after a long-term stay in the Netherlands.[4] Nonetheless, the feeling of guilt originating from causing the long-term exposure of spouse and children to financial, educational, medical and social problems, and the constant threat of the excluded family member being detained or deported is experienced strongly. As one female respondent stated:

> The IND tries to destroy the family… "Because of you I am 1F, our kids have 1F." My children say: "Mum, why have you said you were in the military, why didn't you lie?" Because of the war I lost my brothers, parents and family. But because of the injustice here I lost my husband, kids and life.

The personal accounts of alleged 1F offenders indicate that their long-term dire situation also has a negative impact on Netherlands society as a whole. Not in the least because their 1F status, poor health and ageing inhibit them from working and contributing, through taxes to the economy. In addition, the continuous litigations initiated by both excluded asylum applicants and IND are costly government expenditures. Respondents perceive the 1F policy as incoherent and its implementation as inconsistent. A former member of Algeria's Department of Intelligence and Security said:

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[4] Decision of the State Secretary of Justice, *Wijziging van de Vreemdelingencirculaire 2000*, nr 2008/29 (18 November 2008). Available online at https://zoek.officielebekendmakingen.nl/ stcrt-2008-1080.html.

If IND here suspects an Algerian asylum-seeker of having terrorist ties, what do you think they will do? They will go to AIVD [Netherlands secret services], which searches for data and asks my former colleagues to give information so this person can get 1F… it is Kafka-esque.

Government representatives frequently appear not to know how to deal with alleged 1F offenders who cannot be deported, resulting in mixed messages. A respondent whose refugee status was withdrawn and who was subsequently invited for another IND interview gave the following example:

[The IND representative] said: "According to us you have a refugee status, there's no problem. Go talk to the one who withdrew it." [In the asylum centre after being excluded,] he [Central Agency for the Reception of Asylum Seekers employee] said: "What are you doing here? In our computer it says you have a house and refugee status."

To sum up, the situation of excluded persons in limbo is extremely troublesome for the individuals involved. The social, psychological and financial consequences of their exclusion are severe. For this reason, NGOs, academics and politicians have over the past years criticized the 1F policy and actively lobbied to come to a solution for excluded persons who live in limbo. But what options does the government have? On the one hand the Refugee Convention obliges immigration authorities to strictly apply article 1F, while article 3 of ECHR on the other hand prohibits *refoulement*. Third countries are not willing to offer a way out by opening their borders for alleged 1F offenders. As it stands, international law and politics do not yet have an answer to this fundamental system error in international law.

Ad hoc solutions to the policy crisis

Netherlands authorities in the meantime use ad hoc tools to deal with this crisis. The minister for Immigration, Integration and Asylum, for example, has the option to use his discretionary authority in order to terminate the unlawfulness of the residence of an individual who has not been granted refugee status. This discretionary power can also be used in relation to 1F excluded persons. The condition required to apply this competence is a particularly harrowing situation in the Netherlands for the individual concerned. Although it was recently used for an Afghan man whose expulsion would leave his children behind in the Netherlands without parents, ministers have so far rarely made use of this competence.

A second alternative to end the indefinite limbo situation of an alleged 1F offender in the Netherlands is a type of post-exclusion balancing test which is specifically designed to deal with excluded persons who cannot be deported. It is called the "durability and proportionality test" and was developed in the jurisprudence of the Administrative Jurisdiction Department of the Council of State. It allows the State to disapply article 1F when the gravity of the crime allegedly committed by the asylum-seeker is outweighed by the humanitarian concerns regarding the individual that have arisen after his exclusion from refugee protection. An excluded individual is eligible for a temporary residence permit in the Netherlands when he complies with the following cumulative requirements:[5]

1. The person could demonstrably not be expelled due to human rights concerns during many years[6] and cannot be removed.

2. There is no prospect of change in his situation within a reasonable term.[7]

3. Departure to a third country has been impossible despite the individual's best efforts.

4. He finds himself in an exceptional situation in the Netherlands.

Based on a recommendation by the Advisory Committee for Alien Affairs, "many years" is interpreted as at least 10 years.[8] The "exceptional situation" refers to a medical or other humanitarian emergency and a situation in which his family life is well established in the Netherlands. In practice, the post-exclusion balancing, implemented since June 2004, has been rarely applied and when it has been, it generally concerned terminal illness. In the past two years, it resulted in the granting of a residence permit to fewer than five excluded persons.[9] It thus proves difficult to meet the demands of the durability and proportionality test.

The durability and proportionality test causes much confusion and paradoxical results. Excluded individuals are told to leave the Netherlands directly after being excluded, but an exceptional situation can only lead to a residence permit if they can demonstrate that they have "durably" remained on Netherlands territory for at least 10 years. It is a policy that is not easy to digest for some respondents: "On the one hand I am undesirable, on the other hand IND says I should stay 10 years after which they will review my procedure. I can't go back and I have to wait for 10 years… but no documents?"

5   Council of State, LJN: BB1436 (18 July 2007).
6   Council of State, LJN: AP2043 (2 June 2004).
7   Council of State, LJN: BB1057 (18 July 2007).
8   Bahtiyar, Z., Exclusion of ex-KhAD/WAD members in the Netherlands. In: *Fervet Opus Liber Amicorum Anton van Kalmthout* (M.S. Groenhuijsen et al., eds). (Maklu, Apeldoorn, 2009), p.27.
9   Ah-tk-2011 2012 nr. 1607. Antwoord van Minister Leers op kamervragen van Gesthuizen en Karabulut (20 February 2012).

More problems on the horizon?

The situation described above does not constitute a crisis in numbers. Yet it does represent a crisis for the individuals affected. They live in the margins of society. Despite the fact that the drafters of the Convention clearly stipulated that the application of article 1F is not intended to have a penal function, the de facto consequences are felt as such by the persons concerned. Post-exclusion measures to address this system error are therefore indispensable.

However, the policy measures currently available to end this limbo provide no adequate and coherent solution. Excluded persons are only eligible for the durability and proportionality test if they can survive as undocumented immigrants for a minimum period of 10 years. In the meantime, they have to get by without any support, rights to education, work or secondary medical care.

Meanwhile, new limbo cases appear on the horizon. The Netherlands, in particular, is likely to be faced shortly with a very delicate and problematic issue in relation to 1F due to the location of ICC on Dutch territory. Recently, the Court of Amsterdam decided that three detained Congolese defense witnesses were entitled to apply for asylum in the Netherlands. Considering their alleged involvement in crimes categorized under article 1F of the Convention, it is likely that article 1F will be applied to their asylum case.[10] Article 3 of ECHR might prevent their *refoulement* to a prison in the Democratic Republic of Congo. Will these and future allegedly criminal ICC witnesses seeking asylum in the Netherlands end up in the limbo situation described above?

Next, there is a tendency of more countries setting up structures in refugee determination procedures to implement a more active no safe haven policy. UNHCR is currently in the process of updating its exclusion guidelines. In the prospect of mass influxes of asylum applicants fleeing the instabilities in the Middle East, governments and UNHCR will have to separate legitimate refugees from those there are serious reasons for considering they have been implicated in acts of torture, such as former members of the Syrian or Libyan secret services. But merely excluding such persons may create new problems if no coherent post-exclusion policy is in place to deal with persons who cannot be *refouled*.

A consistent and more uniform approach to the application of article 1F of the Convention and post-exclusion measures is needed. This article discussed some of the dilemmas faced and policies used in the Netherlands, but post-exclusion policies by other countries, when they exist, are often not publicly disclosed. A first step to come to a more coherent policy could be to examine the differences between national approaches to post-exclusion and identify their successes and failures. In addition, considering its guidance on the application of article 1F, UNHCR could take a proactive role in developing post-exclusion measures. The need for sharing information on the matter is evident, since the crisis for migration policymakers and excluded asylum claimants is far from resolved.

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[10] Van Wijk, J., Possible Scenarios following Asylum Applications by Four Defense Witnesses. The Trial of Germain Katanga and Mathieu Ngudjolo Chui (28 August 2012). Available online at www.katangatrial.org/2012/08/possible-scenarios-following-asylum-applications-by-four-defense-witnesses/.