



Protecting Migrants in Complex Crises

by *Khalid Koser*

Key Points

- *During complex crises, migrants and displaced people do not always fit the categories that form the basis for legal, normative, and institutional responses. As a result it is not always clear what type and level of protection and assistance migrants are entitled to, nor who is responsible for delivering it; and as a consequence some migrants fall into “protection gaps”.*
- *There is little political will to fill these gaps by developing new treaties, establishing a new international organization, or admitting significant numbers of vulnerable migrants to the developed world, and so alternative strategies are required.*
- *One is to continue efforts to fill some of the most glaring gaps in the legal framework, for example pertaining to the protection of internally displaced persons (IDPs), and the most realistic method is to develop national and regional policies rather than a top-down binding treaty.*
- *Another response is to develop better mechanisms for cooperation between existing intergovernmental and non-governmental institutions.*
- *Finally, capacity-building is required in countries that receive significant inflows of migrants and displaced persons during complex crises, including developing asylum systems, protecting refugees and IDPs, and maintaining basic services to a level sufficient to support migrants.*

While the relationship between conflict, humanitarian crises, and migration has always been complicated, evidence from recent crises – ranging from Afghanistan, through Darfur, Haiti, Libya, and Somalia, to Sierra Leone – indicates that their migration consequences are becoming increasingly difficult effectively to deal with, at the national, regional, and international levels. One reason is that traditional distinctions between forced and voluntary migration, and internal and international migration, upon which the legal, normative, and institutional framework has largely been developed, are increasingly irrelevant. In some situations migration categories overlap and in others they fail to capture new forms of movement, resulting on one hand in a lack of clarity in institutional responsibilities and on the other in protection gaps. Drawing on examples in particular from the recent crisis in Libya, this paper explains the growing complexity of migration in crisis situations, and provides recommendations on how more effectively to protect migrants in these situations.

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The Migration-Displacement Nexus

Both policy makers and academic scholars tend to use classification systems that place those who migrate into specific boxes, with the assumption that standards, mandates and programmes will follow the designated classification. These categories reflect three dimensions. First, people are designated by where the displacement takes place. Those who cross international borders are designated as “refugees” or “international migrants” whereas those who remain within their national borders are internally displaced persons (IDPs) or “internal migrants”. Individuals are also designated by the causes of the movements. The 1951 UN Convention Relating to the Status of Refugees gives specific recognition to persons who flee a well-founded fear of persecution and cross an international boundary. In contrast, there is no international legal framework for addressing cross-border movements caused by economic deprivation, natural disasters, development projects, environmental degradation or climate change. The third dimension relates to time.

Movements of people are addressed through different mechanisms depending on the phase of migration and displacement. Emergency movements often require specialized assistance and protection due to the instability of the situation. Many refugees and displaced persons, however, are in protracted situations. In these situations the needs, challenges and opportunities differ in many ways from the emergency phase.

To a large extent, categorizing the displaced by geography, cause, and time has succeeded in raising the visibility of groups of forced migrants who previously had been either ignored or had fallen between the cracks in the international system. This has particularly been the case in designating IDPs as a category of concern to the international community. It also allows targeted responses to address issues arising from the specific cause or phase of an emergency. Options for those driven from their homes by conflict, for example, are different in nature and scope to those applicable to persons driven from their homes by development projects or the effects of climate change. Nor does the same approach make sense in every stage of a crisis.

There are nevertheless limits to the approach taken to date, and these have been particularly exposed during recent crises, for example in Afghanistan, Darfur, Libya, and Sierra Leone. The challenge is that increasingly migration and displacement do not neatly fit the categories encapsulated in standards, mandates and programmes. The concept of the “migration-displacement nexus” has been used to describe the complex and dynamic interactions between voluntary and forced migration, both internally and internationally. It can be illustrated in at least five ways:

- Migrants – even refugees – often move because of a mix of motivations that may combine political, economic and social factors. For example in explaining why refugees move there is a distinction between underlying causes which may be conflict, and proximate factors which may relate to the loss of livelihood or separation from family;
- “Mixed migration” is increasingly common, where migrants moving for broadly different motivations are difficult to discern because they move at the same time and together between the same origin, transit, and destination countries, often with the assistance of the same migrant smuggler or agent. A good example is boats that regularly traverse the Mediterranean from North Africa to Southern Europe;
- Migrants can change category quickly. Where refugees return to their home country but cannot return to their place of origin there, as has been common in recent years in Afghanistan, they transform from refugees to IDPs. Where migrants overstay visas, either intentionally or because the regulations on visas change, they effectively “transform” into “irregular migrants”;
- Sometimes individual migrants simultaneously fit two or more pre-existing categories. One example is the intersection between internal trafficking and internal displacement. Another is where migrant workers are displaced in the country where they are working, as has taken place during the floods in Thailand in recent months;

- In contrast sometimes single categories and labels encapsulate people moving for a range of different motivations and who have different levels of vulnerability. The IDP category for example includes people fleeing conflict, natural disasters, and development projects. Arguably the category artificially ascribes the same level of vulnerability to all these people, whereas in reality the circumstances of an individual fleeing for his or her life are significantly different from those of someone formally resettled as a result of the construction of a dam.

Box 1: The Migration-Displacement Nexus: A Case Study of Libya

In a number of ways, the migration consequences of the recent crisis in Libya illustrate the migration-displacement nexus.

First, significant numbers of migrant workers, in particular from sub-Saharan Africa, were displaced inside Libya, alongside internally displaced Libyans. While protection regimes for internally displaced citizens remain inadequate, those for non-citizens who are displaced in another country are non-existent.

Second, the massive cross-border movements that occurred to Egypt and Tunisia combined a diverse range of individuals and motivations, including returning nationals, migrant workers from third countries, Libyans escaping violence, and a few asylum seekers and refugees who had been registered in Libya. Discerning these different categories, and defining their differing entitlements to assistance and protection, proved difficult in a situation where thousands of people were crossing the borders every day at the peak of the exodus.

Third, the boats that departed Tunisia and mainly arrived in Lampedusa were a good example of “mixed migration”. They combined Libyans and Tunisians, in some cases fleeing conflict and political persecution, but in most cases seeking economic opportunity. Also on the boats were sub-Saharan Africans who were part of the annual irregular migration flows across the Mediterranean, themselves also with a mix of reasons for heading to Europe.

This migration-displacement nexus matters because it can leave migrants at risk. Where vulnerable migrants cannot easily be discerned from others it becomes likely that they will not receive the protection and assistance that they may require and indeed be entitled to in international law. People displaced during the slum clearance programme “Operation Restore Order” in Zimbabwe, for example, fell upon coping mechanisms that they had developed as rural-urban migrants, meaning that they were often mistaken as rural-urban migrant workers rather than the victims of a forcible resettlement, and remained hidden from humanitarian organizations. Similarly it is in practice very difficult to identify and locate refugees and IDPs in urban settings, where they tend to settle in squatter settlements alongside rural-urban migrants and irregular migrants from other countries. Another illustration of the vulnerability arising from the migration-displacement nexus is where vulnerable migrants are not recognized as such because of the “mixed migration” settings in which they find themselves. There has been a tendency in Europe in recent years, for example, to view all “boat arrivals” as “irregular migrants”, even though these mixed flows often include at least some people fleeing persecution who

may well be eligible for refugee status.

In other words the categories in which mobile populations are often arbitrarily placed, and the labels used to describe them, can materially impact on their life chances. In many cases, drawing careful lines between categories of migrants hinders rather than facilitates the ability of national, intergovernmental and nongovernmental organizations to offer appropriate assistance and protection. Agencies may too easily avoid responsibility by citing an institutional mandate to serve a specific population. Alternatively, agencies interested in intervening on behalf of a particular group may be denied the opportunity because they have no explicit mandate to do so.

Protecting Migrants in Complex Crises

Recent crises, including that in Libya, have highlighted some glaring gaps in the international protection regime. One is for IDPs. There is no legal or normative framework pertaining specifically to the protection of IDPs, and they are not included in the mandate of any UN agency, even though there are about 27.5 million IDPs worldwide – almost double the number of refugees (see Table 1). The evolving framework for protecting IDPs has relied on governments adopting in national laws and policies elements of a non-binding set of principles that draw on human rights law, international humanitarian law, and refugee law by analogy: the *Guiding Principles on Internal Displacement*.¹ These Principles use a broad description that encompasses many of the causes of forced migration in defining who is covered by the principles. Unlike refugee law, however, the Guiding Principles are not legally binding international law, although they are based on binding human rights and humanitarian instruments. Libya has developed neither a national law nor policy.

Table 1: Top Ten IDP Populations

Country	Number of IDPs
Sudan	4.5m-5.2m
Colombia	3.6m-5.2m
Iraq	2.8m
Democratic Republic of the Congo	1.7m
Somalia	1.5m
Turkey	954,000-1.2m
Pakistan	980,000
Azerbaijan	593,000
India	506,000
Myanmar	446,000

Source: *Internal Displacement Monitoring Centre (2011)*

Migrant workers who are displaced internally within the country where they are working fall into a particular gap, as it is not clear from the *Guiding Principles on Internal Displacement* whether they should also be defined as internally displaced persons. A similar debate occurred

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around the displacement by xenophobic violence of mainly Zimbabwean migrant workers in South Africa in 2008, and earlier over the protection of migrant workers during the conflict in Lebanon in 2006. It is currently taking place in the context of Burmese workers displaced by recent flooding in Thailand.

There is little political will to develop a binding UN Convention on the human rights of IDPs, principally because most states consider IDPs a sovereign issue. Additional obstacles are that treaty-making in the area of human rights at the UN level has become very difficult and time-consuming, and of course having a treaty approved would by no means guarantee its widespread ratification by states confronted with internal displacement. In the absence of a binding treaty, the most realistic way to fill this protection gap is to convince states and regional organizations to incorporate the Guiding Principles on Internal Displacement into domestic law and to adapt their existing laws. Presently around 30 governments have passed laws or developed policies relating to IDPs. Perhaps the most promising recent development in this regard was the ratification in October 2009 of the African Union’s Convention for the Protection and Assistance of Internally Displaced Persons in Africa – the first legally binding regional instrument to impose on states the obligation to assist and protect IDPs.

A similar process – to develop non-binding guidelines that can transform from “soft law” to “hard law” through incorporation in national and regional laws and policies, is also currently being considered to plug other gaps in international protection, for example for so-called “environmental migrants” as well as vulnerable “irregular migrants”.

To an extent institutional cooperation is working around these limitations in the legal and normative framework. In the context of “mixed migration”, and in the absence of a single international agency charged with managing both economic and political migration, for example, it makes sense for the UN agency responsible for protecting refugees (UNHCR) to cooperate with the largest international organization working with migrants (IOM). The evacuation of some 60,000 third country nationals from the Egyptian and Tunisian borders during the Libyan crisis heralded probably unprecedented cooperation between UNHCR and IOM; and during the same crisis the two agencies also cooperated in processing “boat arrivals” in Lampedusa and Malta, and in supporting migrants and refugees at border camps. In the absence of any political will to create a new UN agency with a comprehensive migration mandate, effective cooperation between existing agencies will be important.

A more formal example of institutional cooperation to fill protection gaps is the so-called “cluster approach” to humanitarian crises, according to which different UN agencies are appointed as leads in nine “sectors” or areas of activity according to their specialization. Thus for example UNHCR agreed to be the cluster lead for IDPs during conflict-generated emergencies in three areas: protection,

¹ OCHA, *Guiding Principles on Internal Displacement*, Geneva, 1998.

emergency shelter, and camp coordination/camp management. UNHCR also joined as a member in several other clusters, such as water/sanitation/hygiene (led by UNICEF), logistics (led by the World Food Programme), and early recovery (led by the UN Development Programme). While not limited to IDPs, the new approach does have as one of its major aims to address the need for a more predictable, effective, and accountable inter-agency response to the protection and assistance needs of IDPs. A key element in the cluster approach's design is to strengthen strategic partnerships between NGOs, international organizations, UN agencies, and the International Red Cross and Red Crescent Movement in the field. It is incumbent on the lead agencies to find ways of involving all relevant sectoral actors to give them the opportunity fully to participate in setting and participating in the direction, strategies, and activities of the cluster.

A final set of recommendations for protecting migrants in complex crises is to support the capacity of states where migrants are displaced, especially against the current political backdrop of restricting access to large numbers of refugees and migrants to more developed countries. In response to the Libyan crisis, for example, European countries attempted to minimize the arrival of boats by focusing attention on strengthening borders, as well as providing training and financial assistance, to host governments in the region – especially Egypt and Tunisia. In many countries specific support is often required to develop the capacity to process asylum applications, protect refugees, and maintain health and other basic services to a level sufficient to support migrants.

Capacity-building is also an important part of implementing national laws and policies as described above. Thus for example even in countries that have developed national laws and policies on IDPs and other vulnerable migrants, there is often an implementation gap – good examples are Colombia and Uganda. Common challenges relate to funding; coordination between the various government ministries involved; the lack of an institutional focal point; poorly trained officials; a shortage of data and basic information; and a weak culture of policy monitoring and evaluation.

Conclusion

The legal, normative, and institutional framework for protecting and assisting migrants and displaced people is based on categories that no longer reflect the realities of migration and displacement, especially in complex crises. The effects of climate change are likely to exacerbate this mismatch. In the absence of any political will to develop new treaties, establish a new international organization, or admit significant numbers of vulnerable migrants to develop countries, alternative methods are required to fill the protection gap. These include the development of “soft law” and support for domestic and regional policy- and law-making; more effective cooperation between existing institutions; and capacity-building for affected countries.

February 2012

NB: This paper is solely the opinion of the author and does not necessarily reflect the official view of the GCSP.

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