

FORCED MIGRATION review

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Latin America and the Caribbean building on a tradition of protection



plus articles on: the CRRF, urban refugee integration, a development approach to displacement, new guidelines for assessing SOGIE claims, and the Rohingya crisis.

30th ANNIVERSARY
EDITION

Forced Migration Review

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

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From the editors

The region of Latin America and the Caribbean has long demonstrated hospitality towards those fleeing conflict and persecution within the region and further afield. Faced with newer causes of displacement, such as the violence of organised criminal gangs and the adverse effects of climate change, Latin American and Caribbean countries are continuing to expand and adapt their protection laws and mechanisms in order to address these and other situations of displacement and to meet the differing needs of affected populations.

In his Foreword to this issue, the High Commissioner for Refugees applauds the region's tradition of solidarity and humanitarianism, and recognises the Brazil Declaration and Plan of Action of 2014 as "an important model of honest, transparent and dedicated regional cooperation for the world". Although Latin America and the Caribbean still face significant challenges that require urgent attention, and the number of asylum applications continues to rise, there is much to commend in the region's continuing commitment to provide protection, and much to learn from its varied, often innovative approaches.

As we go to print, Mexico and a number of Caribbean countries are suffering the devastating effects of natural disasters, and many people have been displaced. Some of the articles in this issue discuss research findings and new tools relevant to such situations.

We would like to thank Marco Formisano (UNHCR) and Marcia Vera Espinoza (University of Sheffield) for their assistance as advisors on this feature theme.

We are also grateful to the following for their financial support for this issue: CAMMINA (Central America and Mexico Migration Alliance), Entreculturas, Open Society Foundations, Platform on Disaster Displacement (PDD), Swiss Federal Department of Foreign Affairs and UNHCR. All current and recent FMR donors are listed on page 83.

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If you would like printed copies of either the magazine or the digest, in any language, please email us at fmr@qeh.ox.ac.uk.

At www.fmreview.org/thematic-listings you will find a new FMR thematic listing on Latin America and the Caribbean providing links to the articles in this issue and 70+ additional articles published on this subject in previous FMRs – still well worth reading.

30th anniversary: The first issue of FMR's predecessor, the RPN Newsletter, was published in November 1987 and so with this issue we celebrate our 30th anniversary! We've taken the opportunity to refresh our cover design, and would like to thank all those who have engaged with us over these three decades: readers, authors, donors, advisors and colleagues. See www.fmreview.org/30th-anniversary for our reflections on the past 30 years.

Forthcoming issues:

- FMR 57: Displacement in the Middle East (February 2018)
- FMR 58: Economies, work and displacement, with a supplementary feature on refugee-led social protection (June 2018)

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Marion Coudrey and Jenny Peebles
Editors, Forced Migration Review

Images in FMR

In 2011 we decided that we should whenever possible protect the identity of people shown in FMR by avoiding close-up images of faces and/or, where necessary, pixellating faces. We welcome your feedback on our policy. For more information on our photo policy see www.fmreview.org/photo-policy

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Front cover image

24-year-old Alfredo* from El Salvador works on a farm in the Valley of Peace refugee settlement in central Belize. His mother fled El Salvador and sought asylum in Belize with her sons after her husband was killed by members of a criminal gang. Alfredo's younger brothers study at a nearby school, while the older boys work in agriculture and grow corn and beans to put food on the table. The Valley of Peace was founded in 1982 to provide a safe haven for refugees fleeing the region's civil wars.

*Name changed for protection reasons • UNHCR/Daniele Volpe



Foreword: Regional solidarity and commitment to protection in Latin America and the Caribbean

Filippo Grandi

At a time when over 65 million people are forcibly displaced worldwide, Latin America and the Caribbean offer examples of good practices from a region which continues to uphold a long-standing commitment to protect those in need.

As we observe the global picture of both protracted and newly developing displacement situations, Latin America and the Caribbean may look like a haven of relative safety, spared from recent massive displacements caused by persecution, conflict and violence. Regrettably, and as I personally witnessed in recent visits to the region, this is not the case.

In Northern Central America (NCA)¹, transnational organised criminal gangs are perpetrating appalling levels of violence; in Venezuela, its population is affected by social and political unrest and severe limitations in access to basic services; and in some areas of Colombia, certain armed groups continue to operate with impunity, despite the recent peace agreement. These circumstances are driving people to relocate within their country or to undertake perilous journeys towards neighbouring countries and beyond, often resorting to the services of unscrupulous smugglers as they move in search of safety. Asylum seekers from Haiti and Cuba, and an increasing number of refugees arriving from outside the region, including from countries in Asia and Africa, complete this picture.

The number of asylum applications made in the Latin American and Caribbean region is accelerating, and almost 100,000 people are currently awaiting a decision on their asylum claim. This has been a consistent trend in recent years, placing a strain on asylum systems and adding urgency to the search for appropriate protection and solutions responses.

Aside from the personal tragedies that many have experienced, people on the move face a number of challenges. These relate primarily to: the adequate

identification of their protection needs; access to information on secure relocation alternatives and asylum procedures; access to adequate physical protection in shelters and other safe spaces; effective access to asylum or other forms of complementary protection; access to registration; enjoyment of freedom of movement and of alternatives to detention; and issues related to documentation.

Continuing a tradition of protection

A profound commitment to providing protection to those fleeing in search of safety is embedded in the values of Latin America and the Caribbean. There is a strong and great tradition of openness, solidarity and humanitarianism. History pays witness to



UN High Commissioner for Refugees Filippo Grandi visits the La 72 'Home and Refuge for Migrant People' shelter, Mexico, 2017. www.la72.org

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many examples in this regard, including towards refugees fleeing the Spanish Civil War and Portuguese dictatorships of the 1930s, the Jewish community escaping war and genocide in Europe before and during World War II, Palestinian refugees, those fleeing persecution under repressive governments in South America in the 1970s, and those affected by civil wars in Central America in the 1980s.

This tradition continues to this day.

Concerted efforts are being made to strengthen protection response through improvements to asylum systems throughout the region by reinforcing child protection mechanisms, by fostering gender-sensitive protection interventions and by a strong focus on diversity. The States of Latin America and the Caribbean have also committed to eradicating statelessness by 2024 by establishing fair and efficient procedures for statelessness status determination, adopting internal rules to guarantee the rights of stateless persons and providing adequate solutions to those who do not have a nationality. The region has also been a laboratory for innovative solutions, such as the humanitarian visas granted to

Syrian refugees, the adoption of alternative protection schemes through regional cooperation agreements (such as MERCOSUR and UNASUR visas) and the exploration of the possibility to relocate refugees using protection-sensitive migratory frameworks.

The region has also made unprecedented strides on responsibility sharing and cooperation mechanisms, drawing on its strong tradition of solidarity. Almost all States in the region have committed to a comprehensive approach to mixed migratory movements

and forced displacement through the adoption of the Brazil Declaration and Plan of Action in 2014. This ambitious plan aims to foster access to justice and asylum, strengthen protection, and devise solutions to the plight of all those in need, and will be reviewed in late 2017. This is an important model of honest, transparent and dedicated regional cooperation for the world.

The States of Latin America and the Caribbean are also collectively engaged in responding to the worrying situation in NCA, through a series of coordinated measures in line with the 2016 San José Action Statement. They are also currently establishing a Comprehensive Regional Protection and Solutions Framework (CRPSF) that will deepen their interventions and make them more sustainable, addressing the root causes of displacement in NCA and strengthening protection and solutions for those affected. So far, Honduras, Guatemala, Costa Rica, Mexico, Panama and El Salvador have joined the CRPSF initiative. The CRPSF will contribute to the preparation of the 2018 Global Compact on Refugees, working with UNHCR to respond to the call made in the 2016 New York Declaration for Refugees and Migrants for enhanced, comprehensive and predictable responses to large-scale displacement.

Addressing forced displacement in the Latin America and Caribbean region is a highly complex challenge, to which States have responded with principled and innovative approaches that can help inform broader responses globally. The articles in this issue will help provide insights into the evolving situation there, and offer insights into good practices that can help strengthen protection and intensify progress towards solutions within the region and beyond.

Filippo Grandi

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1. Northern Central American countries comprise El Salvador, Guatemala and Honduras.



UNHCR/Santiago Escobar-Jaramillo

Protection gaps in Mexico

Andrea Villasenor and Elba Coria

With Mexico a major destination – and transit – country for people displaced by violence in the Northern Triangle of Central America, the Mexican government needs urgently to improve its asylum systems and procedures if they are to be fit for purpose.

The Central America-Mexico-United States migration route is one of the largest in the world. According to UNHCR, the UN Refugee Agency, every year some 500,000 people pass through Mexico.¹ For at least a decade, however, there have been clear changes in the composition and characteristics of irregular migratory flows into Mexico, particularly with regard to the causes of displacement in Honduras, El Salvador and, to a lesser extent, Guatemala.

In the 1980s, civil war and repression in countries such as Guatemala and El Salvador triggered displacement both internally and abroad. Some people fled to neighbouring countries but hundreds of thousands went to the United States (US). With the end of

internal conflicts in the region in the 1990s, the flow of Central American refugees came to an end but in its place came large numbers of economic migrants fleeing the poverty that continued to afflict Central American countries, especially the countries of the Northern Triangle (NTCA)² – El Salvador, Guatemala and Honduras. Large-scale natural disasters, such as Hurricane Mitch in 1998 and El Salvador's earthquake in 2001, generated further migration to the US.

In response, Mexico established a Commission for Refugee Assistance (COMAR) in 1980, UNHCR opened an office in Mexico in 1982, and in 1990 Mexico founded a National Commission for Human Rights. The refugee regime was incorporated into Mexican

legislation in 1990, and ten years later Mexico ratified the 1951 Convention Relating to the Status of Refugees. In 2011, Mexico passed a Migration Law and a Law on Refugees and Complementary Protection (a modified version of which became in 2014 the Law on Refugees, Complementary Protection and Political Asylum).

New migration profiles

More recently, the number of people leaving Honduras and El Salvador for purely economic reasons has been declining, while the number of



JRS Mexico

The JRS Office in the city of Tapachula in Chiapas, Mexico, provides psychological assistance to a refugee woman, who is holding a worry doll.

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people fleeing violence, organised crime and persecution has been rising. Since 2006, an estimated 150,000 people have been killed in El Salvador, an average of more than 50 homicides per 100,000 inhabitants per year, more than three times Mexico's rate and more than ten times the US average. In 2015, El Salvador recorded a rate of 103 homicides per 100,000 inhabitants, Honduras 57 and Guatemala 30. The percentage of children under 20 years of age among the victims of homicide in El Salvador and Guatemala is higher than anywhere else in the world, and in 2015 Mexican immigration authorities detained almost 35,000 adolescents, almost half of whom were unaccompanied.

In the last four years, asylum applications in Mexico increased from 1,296 in 2013 to 8,788 in 2016, of which 2,872 were granted refugee status or asylum. These numbers are small, however, compared with the number of people fleeing NTCA countries who are intercepted and detained in Mexico. From 2013 to 2016, more than 520,000 people from NTCA countries were arrested, most of whom (517,249) were subsequently deported by the authorities (under the aegis of the National Institute of Migration, INM).³ Of an estimated 51,000 unaccompanied migrant children and adolescents with possible protection needs arriving in Mexico from Central America between 2013 and 2016, only 1.1% applied for asylum and 230 (0.4%) were granted refugee status or complementary protection.

Despite recent improvements in recognition rates and a commitment made at the UN Summit for Refugees and Migrants in 2016 to introduce seven concrete actions in order to provide 'a dignified and humane treatment of migrants and refugees', there continue to be many challenges to providing protection for refugees in Mexico. There is an immediate need to adopt measures to identify those in need of protection, and to provide timely and effective access to refugee status determination procedures including access to justice and in particular to legal defence. Mexico also needs to develop public policies which will be effective in ensuring local integration and the full guarantee of rights for the refugee population.

Refugee identification measures

A fundamental consideration in the formulation of public policies is the socio-demographic profile of those who seek protection. So far, this element has had little or no impact on the actions taken by COMAR or INM to improve on the provision of information on the right to asylum, its scope and access mechanisms.

Those who flee to Mexico from El Salvador, Guatemala and Honduras commonly have low levels of schooling and/or are socio-economically vulnerable, yet information about asylum and how to apply for it is still meagre and provided only grudgingly. There may be reasons for this but keeping back this information ignores the fact that people who require protection tend not to know their right to be recognised as refugees; they are usually less educated, and may even be illiterate, factors that hinder their full understanding of the legal aspects of the situation in which they find themselves. Their relatively low socio-economic status increases their vulnerability and their suffering. Lack of information about their situation is an impediment to identifying – and addressing – their protection needs.

Access to asylum procedures

The migration policies and practices currently implemented by Mexico are one of the main barriers to access to asylum procedures. Measures such as compulsory and systematic detention of persons on the move and the administrative speed with which enforced repatriation is carried out, as well as the lack of resources available to individuals wishing to seek protection from being returned, all interfere with the right to apply for refugee status. In this regard, it is essential to take measures that override the official discourse that people are merely 'in transit' through Mexico. This argument is increasingly questionable and unsustainable. The State must also ensure that returns do not violate the principle of *non-refoulement*. Mexico needs to instigate appropriate training, including guidelines and implementation manuals, in order to ensure that Mexico's migration and asylum practices conform

to international standards – such as, for example, developing and introducing alternatives to detention for asylum seekers.

Access to justice and due process

The Law on Refugees, Complementary Protection and Political Asylum establishes standards of protection and procedures that are clear and adequate. In practice, however, there are administrative and operational barriers that undermine the protection guaranteed by law and the implementation of the right to fair and efficient proceedings – such as, for example, through limiting access to legal assistance for those individuals detained in immigration detention centres. Such barriers obstruct and limit the right to protection as a refugee, which in turn can call into question a State's commitment to providing effective protection for refugees.

In addition to addressing the shortcomings that currently obstruct recognition of refugee status, Mexico must

also introduce effective mechanisms of inter-institutional coordination with the National Institute of Migration to facilitate the process of regularisation once people are recognised as refugees. And, finally, Mexico will need to establish comprehensive programmes to ensure that all members of the refugee population have access to rights such as health and education and to promote their social and economic integration.

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1. UNHCR Fact Sheet. February 2017
<http://bit.ly/UNHCR-Mexico-Feb2017>

2. Also now referred to as Northern Central America.

3. Source: Ministry of the Interior - Migration Policy Unit

Silencing criticism in Mexico

Ximena Suárez and Daniel Zapico

Journalists and human rights defenders in Mexico are being attacked in an attempt to silence their criticism. Many are forced to flee or risk being assassinated. The consequences are both personal and of wider social significance.

In the context of the widespread violence associated with organised crime in Mexico, human rights defenders and journalists often become specific targets. Since the year 2000, at least 125 journalists have been killed in Mexico and another 21 have gone missing. Meanwhile, from December 2012 to July 2017 at least 106 human rights defenders have been killed and 81 disappeared.¹ And, although data is hard to obtain, 276 attacks against the press have been reported in 2017, 23% more than in 2016.²

Denouncing human rights violations, publicising the corruption of local authorities or simply providing information on what is happening in certain areas of the country are sufficient grounds for individuals to

be threatened, assaulted, assassinated or disappeared. With the authorities unwilling or unable to crack down on criminal gangs and turning a blind eye to aggressions committed by government officials, it falls to journalists and human rights defenders to expose murders, disappearances or other criminal acts. To prevent them from doing this, criminal groups force some journalists to collaborate with them or face being victims of aggression themselves. In popular parlance, the offer is 'silver or lead'.

This context is often aggravated by the open hostility of different authorities towards journalists and human rights defenders, which reduces or eliminates the possibility of seeking protection or

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support. In addition, impunity is almost absolute. There were only three convictions for attacks on journalists between 2010 and 2016 – just 0.15% of all cases investigated by the Office of the Special Prosecutor for Crimes against Freedom of Expression.

The displacement of defenders and journalists

Many journalists and human rights defenders opt for silence, abandoning their human rights work, while others – when the risk becomes unbearable – are forced to move to other parts of the country or to other countries. For those who decide to seek refuge in other countries, however, there are additional barriers to protection. Journalist Martín Méndez Pineda, for example, travelled to El Paso, Texas, and applied for asylum in the United States but after spending four months in a detention centre – which he described as “hell” – during which he was twice denied release on parole, he decided to return to Mexico even though he was aware of the danger to which he was returning.

Sometimes the authorities themselves use relocation as a way to offer protection to an individual at risk. The Mechanism for the Protection of Human Rights Defenders and Journalists, created in 2012 by the Mexican government and which is currently protecting 538 people (342 human rights defenders and 196 journalists), includes among the protection measures available to it the temporary relocation of the person who has been threatened or attacked.³

Although relocation may in certain cases be an urgent measure in order to provide security, it should not be forgotten, however, that this is only being offered because of the government’s inability to ensure not only the right to reside where one wants but the right to freedom of expression – and the right of (and need for) society to be kept informed, as well as the right to defend human rights.

Consequences of displacement

The impacts of displacement on journalists and human rights defenders are multiple. For example, the experience of being uprooted and the loss of social relations – a common

phenomenon in cases of forced displacement – is particularly pronounced for journalists and defenders as they often flee alone, leaving their family behind. Uncertainty about their possible return makes integration in their new location particularly difficult. And they often feel guilt about putting their families at risk or creating economic difficulties for them.

There are also wider social implications of the silencing or displacement of journalists and human rights defenders. Many of the states in Mexico where recent attacks have occurred experience serious problems with violence, the presence of organised criminal groups (including cases of collusion between criminal groups and authorities), forced disappearances, internal displacement, land dispossession and other human rights violations. Journalists and human rights defenders attacked in recent months had spoken out and reported on many of these issues. Moreover, these states have a history of violence against journalists and human rights defenders (which has not been investigated or punished). Even in such hostile and dangerous contexts, journalists and defenders carry out important work to document, denounce and bring to light news and events of relevance to the safeguarding of Mexico’s population, the prevention of other human rights violations, including displacement, and the protection of rights.⁴

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1. Red Nacional de Organismos Civiles de Derechos Humanos “Todos los Derechos para Todas y Todos” (Red TDT) (2017) *La Esperanza no se agota* <http://bit.ly/RedTDT-Esperanza-2017>

2. Article 19 (2017) *Primer semestre de 2017: 1.5 agresiones diarias contra periodistas en México*. <https://articulo19.org/informesemestral2017/>

3. Espacio OSC (2015) *Segundo diagnóstico sobre la implementación del Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas* <http://bit.ly/EspaceOSC-2015>

4. See WOLA ‘Statement on Violence against Journalists and Human Rights Defenders in Mexico’, 7th September 2017 <http://bit.ly/WOLA-07092017>

La 72: an oasis along the migration routes in Mexico

Alejandro Olayo-Méndez

Locally run shelters along the migration routes in Mexico provide sorely needed respite and support. In the face of violence, stricter migration policies and daily obstacles, those working at the La 72 shelter strive to respect people's sense of dignity while caring for their safety.

It was Saturday and they were dancing the night away. A group of young men used plastic buckets for an improvised drumming session. It was not until 3:40 in the morning that everything finally went quiet. By 8:30 am, normal life resumed when a well-known

Central America² – El Salvador, Guatemala and Honduras – seek recognition as refugees in Mexico. In recent years, the main routes used by migrants and asylum seekers have seen an increase in violence, risks and financial costs to the users, as a result of

stricter immigration policies, an increase in border control (both in Mexico and the US) and a rise in criminal activity along migration routes. The increase in criminal activity is partly due to an overlap of the migration routes with the ones used by drug traffickers and criminal gangs.

Along the routes, a network of humanitarian aid organisations managed by local non-governmental organisations (many of them faith-based) has emerged to assist, help and advocate for migrants. By the end

of 2016, there were about 85 organisations offering food, shelter, first aid and instruction both in human rights and in practical matters of health and safety. La 72 is one of them.

Creating a humanitarian space

La 72 is located in the small town of Tenosique in the state of Tabasco in Mexico, 58 kilometres from the Mexican border with Guatemala. Migrants and asylum seekers arrive at this town hoping to jump on a freight train as part of their attempt to reach the US. While not all the migrants who pass through



Alejandro Olayo-Méndez

La 72 shelter.

voice broke through the silence. “Friends, get up. We need to clean up.” This was Fray Aurelio, one of the Franciscan friars working at the shelter. A new day was beginning at La 72 – ‘Home and Refuge for Migrant People’ – in southern Mexico.¹

While Mexico has long been known as an emigration country, it has more recently become an important transit country for people leaving Central America for the United States (US), and also a new destination country. An increasing number of people fleeing violence in the Northern Triangle of

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the town use the services at La 72, between 120 and 140 migrants stay at the shelter every day. While most come from Honduras, there are also people from Guatemala and El Salvador, and occasionally some from South American or African countries.

People often arrive by foot but if they have money and are able to avoid border patrols they arrive by public transportation. Many are robbed by the criminal gangs that operate within those 58 kilometres between the border and Tenosique. At times, the violence reaches levels of extraordinary brutality – women gang-raped while the men in the group are held hostage at gunpoint or threatened with machetes. With government border control checkpoints installed along the main roads, irregular migrants are forced to use more dangerous roads.

Like many other shelters in Mexico, La 72 sprang from the local community which was aiding migrants in distress long before they established a formal non-governmental organisation (NGO). Early in the 1990s, the Franciscan Friars provided what food and shelter they could at the local church. In 2010, 72 migrants were massacred in San Fernando, Tamaulipas, in northern Mexico. This event triggered the decision to move to a new facility that could provide better services for the migrants, with the name of the new facility commemorating the 72 killed. Initially, the shelter provided support mostly to economic migrants but, as the profiles of those passing through the shelter changed, support was extended to asylum seekers.

The goal was to create a ‘humanitarian space’ that could provide not only shelter and sanctuary (Mexican migration law prohibits authorities and police from conducting raids or inspections in places providing humanitarian aid) but also a place where migrants could feel dignified and supported. First and foremost, migrants are human beings who deserve respect and support in the face of an unjust and violent system that forces them to leave their home countries.

“These places are like an oasis along the road. Without them our journey would be almost unbearable.” (Honduran migrant)

Initially, the shelter had a small staff and facilities were basic. By the beginning of 2016, the shelter had a staff of eight and an array of volunteers from local areas as well as from other parts of Mexico, Europe and other developed countries. Médecins Sans Frontières, Asylum Access, the Red Cross, the UN Refugee Agency and various Mexican NGOs provide targeted services at the shelter for both economic migrants and asylum seekers. Now the shelter also has a project for unaccompanied minors and a programme for LGBTIQ³ people, and provides legal counsel and representation for those seeking asylum. The shelter’s facilities have also expanded, providing separate facilities for unaccompanied minors, women and LGBTIQ people.

The shelter has an ‘open door’ policy because it does not want to resemble a detention centre or prison. At La 72, migrants can come and go freely. Some migrants rest at the shelter while others go to town either to find jobs or to beg, so as to gather money to continue their journeys. The migrants’ presence creates enormous tensions in the local community. While some local people support the shelter generously, others blame it for social problems such as robbery, harassment and sexual abuse. Handling the tensions with the community as well as with local, federal and migration authorities has never been easy. New challenges always emerge. One such challenge is to keep advocating for migrants and refugees while giving voice to their needs and circumstances. Another is to continue working with local community and authorities to foster hospitality and respect for human rights.

At La 72 every Saturday night is a party but every day is a battle to support those migrants and refugees who seek justice, safety and the opportunity for a dignified life.

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1. www.la72.org

2. Also now referred to as Northern Central America.

3. Lesbian, Gay, Bisexual, Trans, Intersex and Queer/Questioning

Mexico's Michoacán state: mixed migration flows and transnational links

Xóchitl Bada and Andreas E Feldmann

Against a backdrop of unremitting violence in Mexico, traditional migration patterns in the North American corridor are being reconfigured.

The long-established stream of migrants trying to reach the United States (US) in order to improve their economic security has been broadened by thousands of forcibly displaced persons fleeing violence and insecurity in Mexico.¹ Rigid distinctions between voluntary and forced migration are becoming blurred as people threatened by violence, lack of economic prospects and/or environmental degradation leave their homelands to protect their fundamental rights. UNHCR, the UN Refugee Agency, has reported a significant rise in asylum petitions by Mexican nationals in the US, from 3,669 in 2000 to 14,643 in 2016, despite low acceptance rates in the US.²

A critical question for the understanding of contemporary configurations of movement in Mexico concerns how violence is influencing people's decisions to move and how they are selecting their destinations. In addition to seeking shelter within Mexico or applying for asylum abroad, vast and long-established migration networks offer a third possibility to those affected by violence: crossing into the US, with or without documentation. In order to study

this transnational movement, we explored the case of the Mexican state of Michoacán.

Violence and displacement in Michoacán

Michoacán has been severely impacted by narcotics-related violence, with the rise of several prominent criminal organisations. Enabled by their vast wealth and coercive capacity, drug cartels have permeated the economy, and the country's rather weak government is incapable of stopping the process. Michoacán has also witnessed the rapid expansion of self-defence militias that emerged as a reaction to organised crime. Thousands of Michoacanos (people from Michoacán) have been forced to flee to makeshift camps on the outskirts of towns and cities, while the State – undermined by powerful non-state actors – has been unable and/or unwilling to provide assistance and protection to these internally displaced people (IDPs).

Michoacán faces the additional challenge of attempting to assist and reintegrate thousands of migrants who return from the US because of unemployment or who are deported from the US due to criminal convictions or lack of documentation. Under the current presidential administration, the US Department of Homeland Security has successfully implemented a policy based on fear tactics to encourage thousands of undocumented immigrants to return voluntarily rather than risk mandatory custodial sentences if caught by Immigration and Customs Enforcement. These returnees sometimes attempt to settle in larger cities in Michoacán where they have social networks, in search of better employment opportunities. Others return to their home towns to live with relatives, where they frequently face scarce employment opportunities, an absence of



Rubén Figueroa/Movimiento Migrante Mesoamérica

Migrants in transit, Mexico.

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integration policies, and violent conditions, prompting the need to move yet again.³

Choosing a destination

Michoacán has a long tradition of international migration. The presence of Michoacanos in the US dates back to the early 20th century when thousands of men migrated north to work in agriculture. In the 1960s women and children joined this migration flow. The presence of these migrants was instrumental in creating a transnational community with robust economic, cultural and political ties, and there is a constant stream of movement between Michoacán and several cities in the US, including Chicago, Dallas and Los Angeles. In 2014, the state of Michoacán received US\$2.2 billion in family remittances, the largest amount received by any Mexican state. This represents 10% of the state's annual gross domestic product (GDP) and is twice the value of state exports.

Politically, Michoacán identifies itself as a bi-national state. The governor of Michoacán and other authorities regularly travel to the US in order to maintain and deepen their ties with the Michoacán diaspora. For their part, Michoacanos in the US return often to Michoacán and actively engage in lobbying and interaction with regional authorities and communities concerning the migratory status and living conditions for Mexicans in the US. The state organises every year a bi-national migration forum (Foro Binacional del Migrante) at which regional authorities and a plethora of organisations from Mexico and the US come together to discuss problems and challenges including governmental help to returnees, support for job creation, health and education programmes, the development of infrastructure projects, and measures to enhance migrants' security. These issues are relevant to both economic migrants and forced migrants.

The unlikelihood of receiving assistance and protection in Mexico, the fear of being targeted even when they move internally, the existence of long-standing transnational networks and the prospect of finding better opportunities in the north all seem to inform

the decision to seek protection by crossing the Mexico-US border, despite migrants' lack of documentation. In order to study this phenomenon, we conducted interviews and surveys with authorities, representatives of civil society, academics and migrants.⁴

As we learned in visits to Michoacán and interviews with migrants in Chicago, people leave their communities as discreetly as possible, trying to avoid detection by violent actors, and relying on existing networks – social capital – for their protection. Those fortunate enough to have relatives and close friends in the US often receive critical support (money, visa sponsorship, information, shelter) that allows them to travel and reach the US and, once there, find a job and adjust to their new lives.

While conditions in the US for Mexican migrants – both economic migrants and asylum seekers – have deteriorated significantly since the 2008 economic crisis and the recent policies implemented by the current Trump administration, our interviewees pointed out that many of those who fear for their lives in Mexico prefer to face uncertainty and danger in the US rather than stay put in Michoacán. A long-standing culture of migration plays a huge role in facilitating this movement because for many Michoacanos migrating is an integral part of their upbringing.

Current circumstances pose enormous challenges to information gathering, rendering the task of tracing migrants' journeys difficult. Not only are fleeing migrants reluctant to speak but government officials in Mexico and the US are similarly reluctant, all fearing being targeted by narcotics-related criminal organisations. The difficulty of obtaining information is exacerbated because Mexican authorities cannot be seen to provide information that confirms the scale of the exodus of their citizens to the US, as doing so would signify capitulation to drug cartels.

Federal and Michoacán state authorities, including the Federal Executive Commission of Victim Services and the Migrant Affairs Secretariat in Michoacán, recognise forced migration as a problem but lack a thorough

awareness of its dimensions and transnational connections, and lack the policies needed to coordinate assistance to those affected. Even in the current context of violence in Mexico, there are almost no government programmes in place to assist and protect IDPs.⁵ Civil society has also been slow to react. Similarly, migrant civil society representatives in Michoacán can only offer scant evidence documenting those who have migrated north, with their ability to investigate impeded by lack of resources and fear of retaliation.

Given the predicament faced by thousands of uprooted Michoacanos, it is incumbent upon the Mexican authorities, both at the Federal and State level, to implement concrete measures to assist and protect this population, especially the most vulnerable. At the very least, measures should include: opening shelters where victims could receive vital aid and medical assistance and be protected from harm; strengthening existing mechanisms to report human rights violations and other crimes; developing a national register of displaced people; and, as far as possible, devising mechanisms to help victims to return to their communities

and to promote other durable solutions. The international community, for its part, should provide financial and technical support to increase the capacity of the Mexican state to confront this mounting humanitarian crisis.

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1. Albuja L (2014) 'Criminal violence and displacement in Mexico', *Forced Migration Review* issue 45 www.fmreview.org/crisis/albuja
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Criminal violence in Honduras as a driver of displacement

Suzanna Nelson-Pollard

The impact of violence is felt daily in the Northern Triangle of Central America and is a major driver of displacement, yet its very nature obstructs identification of and access to those in need of protection. Honduras is now a case-study in the CRRF process, presenting an opportunity to learn from what is done, and not done, in one of the affected countries in this region.

With homicide levels in the region on a par with some of the world's worst armed conflicts,¹ gangs and criminal groups represent the new face of organised violence in Latin America. For many people, having a close family member or friend who has experienced kidnapping, mugging, robbery, extortion, sexual violence or murder is commonplace, and in some countries the scale and severity of the violence are

broadly comparable with the insurgency-based conflicts of earlier decades.

Increasing efforts are being made by some States, international agencies and non-governmental actors to respond to the violations perpetrated by gangs and criminal groups, yet displaced people are still not getting the protection they need. A first step in dismantling barriers to accessing protection is to secure increased

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global recognition of violence and persecution as the primary drivers of forced displacement in the Northern Triangle of Central America (NTCA)². The next step is for states to improve their ability to reach displaced communities and to identify those with specific protection needs.

An encouraging development in the push for increased recognition of the situation came in early 2017 when Honduras announced that it would be one of the case-study countries for the Comprehensive Refugee Response Framework (CRRF), a process led by UNHCR to provide inputs into the Global Compact on Refugees. A number of countries in the region then also announced their intention to be case-study countries, enabling collaboration for a regional response to displacement in the Northern Triangle. The participation of the NTCA region in the CRRF process provides the opportunity to address a context with different circumstances and needs from those of traditional refugee situations. With gang-related violence increasing as a driver of displacement globally, there are far-reaching implications for other regions in what is done, and not done, in Honduras.

The Comprehensive Refugee Response Framework (CRRF) is the name given to the first of two Annexes to the New York Declaration for Refugees and Migrants adopted in September 2016. The CRRF promotes a sustainable approach linking humanitarian action with development assistance in situations involving large-scale movements of refugees, and focuses on a number of actions and best practices in four areas: reception and admission measures; support for immediate and ongoing needs; support for host countries; and enhanced opportunities for durable solutions. A number of countries have agreed to be case-studies for the CRRF; the lessons drawn from these countries' experiences will inform the preparation of the Global Compact on Refugees in time for the UN General Assembly in 2018.³

Accessing IDPs

Honduras is the only country in the NTCA which has publicly recognised the phenomenon of internal displacement, and is now working to adopt national legislation on preventing internal displacement and protecting and assisting IDPs, the first of

its kind in the region. However, across the region, States, international agencies and non-governmental organisations (NGOs) are only now starting to grasp the full extent of internal displacement in the region. Unlike more visible situations of displacement such as from the Syrian conflict, people fleeing criminal violence often try to remain unnoticed. Access to data is improving, with surveys having been conducted in Honduras and El Salvador but these only partially cover the situation. A study from 2014 found 174,000 IDPs in Honduras but it only covered 20 out of 290 municipalities.⁴ Based on this study, the Internal Displacement Monitoring Centre projected that this figure had risen to 190,000 IDPs in 2016. The Norwegian Refugee Council (NRC) has undertaken its own surveys to find children who have dropped out of school in areas affected by extreme violence, and has consistently found that actual numbers of people affected are higher than government estimates.

Governments and NGOs often speak of the 'invisibility' of internal displacement in the Northern Triangle, especially as IDPs tend to lie low to avoid being followed by their persecutors and do not register with the authorities due to lack of trust. Those working directly with affected communities, such as NRC, know that this invisibility means that the communities are very difficult to access. States often have no control over zones affected by gang violence and are unable or unwilling to provide basic services for communities living there. For humanitarians, negotiating with gangs to secure access to vulnerable displaced people is uncharted territory. Some organisations, such as NRC, have managed to gain some access through careful negotiation but such access is dependent on many factors that could change instantaneously. In May 2017, NRC provided humanitarian assistance for 200 people who had been newly displaced from their homes in San Pedro Sula in Honduras due to a rise in gang warfare; more could have been done if the government and other humanitarian actors had had unhindered access to the affected population.⁵



The Villa Cristiana neighbourhood of Tegucigalpa, Honduras, is controlled by the Mara 13 armed group, which does not allow children to attend school in the adjacent neighbourhood.

Identifying protection cases

In parallel to gaining better access to internally displaced people, States must also improve their methods of identifying protection needs. Governments of the NTCA continually claim that a mere 5-10% of all people leaving their countries do so for reasons related to violence,⁶ and that the other 90-95% of people leave for economic reasons or to reunite with family. In the meantime, studies carried out by UN agencies and NGOs reveal dramatically different figures, with between 40 and 60% of children, adolescents and women surveyed leaving for reasons related to violence.⁷

It may be that generalised violence has become so normalised that many of the hundreds of thousands of people displaced across the region do not immediately identify violence as the primary cause of their displacement. The disparity in statistics, however, can be partially explained by the conditions in which protection cases are identified and data is gathered. NTCA government figures recording cross-border displacement come from interviews taken in deportee reception centres processing people who have been sent back from the

United States and Mexico. While in recent years the Honduran government has significantly improved the conditions of these reception centres, which now provide immediate assistance and child-friendly spaces, they remain inadequate locations for collecting complex and personal data on motivations for leaving the country. Interviews are often conducted in spaces that lack the necessary privacy for divulging sensitive information, for example, about abuse, violence or fears of persecution from gangs. Government employees (who in some cases are volunteers) conduct the interviews but often have insufficient training in identifying protection risks.

Decades of state violence and corruption have eroded trust in the system, and there is consequently little incentive to confide in state officials when needing to seek protection. Arguing that most people want to leave the reception centre as soon as possible, Honduran authorities rush deportees through registration, medical and psychological check-ups, and entrance interviews, and then give them a small meal – all in the space of an hour – before putting deportees on a bus to the closest urban area.

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These circumstances are not conducive to people reporting the often complex and traumatic original reasons for leaving the country, to say nothing of the human rights abuses they may have suffered during their flight. In many cases, returnees also know that the capacity of the government to provide a real solution (such as referral pathways or resettlement opportunities) to their case is limited, and that even their capacity to follow up on individual cases is scarce. With few people granted international protection from gang violence, displaced people may see little value in requesting asylum upon arrival in destination countries. In addition, do they indicate economic reasons as their principal reason for making the journey north in order to demonstrate that they are willing to work and contribute? Similarly, do they declare family reunification as the reason for their journey in order to show that they have a support network in the country of destination?

In destination countries, many people are offered the choice of either signing their own deportation notices to be sent back home or facing a lengthy detention sentence while their case is processed. Both in destination country and upon return, it is often easier for individuals to report that they left the country seeking economic opportunities or family reunification, so that the authorities will leave them alone – and they can try the journey again.

Seizing the CRRF process

Across the NTCA there is a fundamental lack of understanding around push and pull factors of displacement, and the role that violence plays in the journeys of many. Humanitarian organisations must recognise this gap in understanding of drivers and the accompanying failure to identify people in need of protection. They must also ask themselves whether the law, policies and programmes developed for protecting and assisting displaced persons in conflict contexts such as Syria or the Democratic Republic of Congo should be applied equally to these scenarios of criminal violence, or whether other solutions and approaches are needed.

The CRRF process in Honduras is an opportunity to address these issues and, ultimately, to protect people displaced internally and across borders. UNHCR and NGOs such as the Norwegian Refugee Council are currently gathering recommendations for action from States, displaced people, civil society organisations, faith groups and local communities. In October 2017, States from the NTCA and the wider region will meet in Honduras to define and pledge commitments to stronger collaboration and protection mechanisms and decide on a Comprehensive Regional Protection and Solutions Framework. This process must translate into sustainable engagement of humanitarian and development actors, greater responsibility sharing fostered by States through strengthened national protection structures, more funding for protection, and a dramatic increase in legal pathways for those in need. Actors across the NTCA must identify and acknowledge the role of violence in driving displacement, and seize the window of opportunity to act now and make a real difference for people in urgent need of protection.

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1. See Cantor D J 'Gang violence as a cause of forced migration in the Northern Triangle of Central America' in Cantor D J and Rodriguez Serna N (Eds) (2016) *The New Refugees, Crime and Displacement in Latin America*, pp27-45.

2. Also now referred to as Northern Central America.

3. www.unhcr.org/uk/comprehensive-refugee-response-framework-crrf See also article by Manisha Thomas in this issue.

4. Study by the Honduran Inter-Agency Commission for the Protection of Persons Displaced by Violence supported by UNHCR and the Joint IDP Profiling Service www.internal-displacement.org/countries/honduras

5. See *Forced Migration Review* issue 37 (2011) 'Armed non-state actors and displacement' www.fmreview.org/non-state

6. Statistics cited in discussions with Honduran authorities in November 2016, and in public statements made by Guatemalan officials at Global Consultations on Migration in May 2017.

7. See for example UNHCR (2014) *Arrancado de Raiz* <http://bit.ly/UNHCR-UprootedExecSummary-2014>
Also: UNHCR (2014) *Children on the Run*
www.unhcr.org/uk/children-on-the-run

Factors influencing decision making by people fleeing Central America

Vickie Knox

Interviews with people who have fled violence in Central America reveal the influences behind their decision making prior to and during flight.

In late 2015, I conducted interviews with Central Americans staying at a shelter in Ciudad Ixtepec, a town in southern Mexico, and with Salvadorans who had been deported from Mexico and were now at a centre for returnees in Santa Tecla, El Salvador. All had fled the Northern Triangle of Central America (NTCA)¹ because of criminal violence and insecurity. The interviews reveal some of the reasoning behind people's decisions to flee and give a clear picture of, firstly, why internal flight is often not a viable option and, secondly, how learning about the right to asylum affects decisions taken during flight.²

Those interviewed had experienced slightly different levels of risk, depending on the types of threat they had experienced and the point at which they had escaped, and this appeared to result in different patterns of mobility.³ Some of the incidents they had experienced posed immediate risk, including attempted murder, serious physical assault and credible death threats. Others posed an imminent risk, including threats that a person would be killed if they refused to do something, such as join a gang or pay extortion. Credible death threats or attempted murder drove emergency flight to escape the immediate risk, while people also left their country in an evasive move to avoid the imminent risk of reprisals and violence: "The gangs want me to work with them. My family says that it is not safe for me to be there."⁴ Others made a pre-emptive move to avoid future risk.

Why internal migrations fail or are not attempted

The broader situation of insecurity within the NTCA means that internal relocation within one's own country is not a viable option for many people who are at risk. States' failure

to provide protection or resettlement results in internal relocations that are precarious and often unsuccessful, and the absence of an effective State presence has enabled non-State actors to usurp territorial control and act with impunity throughout the region. People from all three NTCA countries who moved internally prior to leaving the country said that they had experienced the same problems and insecurity after their internal relocation – and that this had resulted in their subsequent external migration.

Those who had fled immediate risk, such as attempted murder, reported more threats and personal insecurity after internal flight due to the communications networks of the gangs: "It's the same everywhere, and they know where you go. Better to leave the country." Those at imminent risk also expressed the futility of their internal flight. Internal displacement is often not sufficient because of the reach of criminal groups and their extensive communications networks. People's decisions to leave their countries were made expressly because of the danger they ran in their country of origin, their level of risk and the failure of the State to protect them.

Both internal displacement and flight into another NTCA country can also increase the risk to an individual. If someone relocates from one gang-controlled neighbourhood to one controlled by a rival gang, they will be at serious risk from both groups, even if not affiliated to either gang or to any other. Similarly, if they move to an area that is neutral but requires them to cross either gang's territory to visit relatives or go to work, their risk is heightened: "I moved from one neighbourhood to another, and going to visit my mother meant I had to return to the first neighbourhood. I couldn't

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just move – there were gangs, threats, the same – especially because I moved.”

Although having social capital – networks and relationships – in the destination location can help when relocating internally,⁵ none of the interviewees highlighted a lack of social capital as a barrier to successful internal flight, mentioning instead two significant barriers: a lack of State control that has resulted in the pervasive presence and territorial control of gangs, and an absence of effective State response and protection for people who have been forced to relocate internally.

There were also some people who had not experienced actual or threatened violence and did not attempt internal relocation before leaving their country but who made a pre-emptive move abroad to avoid extortion or because of a degrading local security situation. One Salvadoran family had moved before starting to pay extortion, explaining: “I couldn’t pay, because if you pay once, you have to pay forever – or end up face down.” Overall, their reasoning for their external migration was a lack of adequate State protection in their country of origin. Half of this group had social relationships and networks in their intended destination but this appeared to determine their destination rather than influence their decision to leave their countries.

How information about rights affects trajectory

There was scant prior awareness among the interviewees of the right to seek asylum or the fact that it could apply to their circumstances. At the migrant shelters they stay in along the way, people moving through Mexico receive varying amounts of information about their rights. All people staying at the shelter where I conducted interviews were informed during their initial registration interview of the right to apply for asylum. Many expressed surprise that such protection existed and could be applicable to them. One Salvadoran told me: “I never knew we had a right to be safe.”

One third of all interviewees who had fled death threats or forced recruitment decided to claim asylum in Mexico, changing their migration plans after being informed of this

right during transit. For some people without social capital and a specific destination who were fleeing certain death, the decision-making process became very straightforward and they cited just one factor: “I heard about the right to asylum.” One interviewee made dramatic changes to his plans after learning of the right to seek asylum. His initial plan was to take his 15-year-old stepson to the United States (US) to avoid forced recruitment and death threats, and then to return to Honduras to look after his family. He told me: “We arrived here in Ixtepec and they told us about the right to asylum, which I had never heard of before. I plan to go back to collect my family so that I can claim asylum with them all.” It is evident that lack of knowledge about asylum is a barrier to protection, and that the right to seek asylum could factor in migration decisions if there were widespread awareness of it in the country of origin.

Despite recognising that they could have a valid claim for asylum, however, some people chose instead to apply for a humanitarian visa (available for migrants who have been victims of or witness to a crime while in Mexico and – in theory at least – for asylum seekers⁶) either to regularise their stay in Mexico or to facilitate a safe journey through Mexico to the US. For those who decided to remain in Mexico, this decision was influenced chiefly by the Mexican authorities’ general refusal to accept applications for asylum and a humanitarian visa concurrently, meaning that applicants had to choose between one or the other. So even when people do receive information about international protection and their rights, my research suggests that many choose not to file claims in Mexico, despite acknowledging their potential eligibility.

Those with family or friends in a specific destination city were less likely to change their plans while in transit, demonstrating that social capital is also an important factor in the decision-making process

Final reflections

The interviews indicate that incidents resulting in immediate or imminent risk were the catalyst for people to leave their

homes but that structural factors – namely the lack of State protection in the country of origin – drove external migrations. External flight is being driven by a powerful trio of structural factors: the pervasive presence of organised criminal groups throughout the region, a lack of effective State control leading to the usurping of territorial control by organised criminal groups, and an absence of State response to people who are forced to relocate internally. Social capital and knowledge of one's rights may influence decisions along the way and so determine one's ultimate destination but migration controls and policies have little bearing on decision making when push factors are so overwhelming and flight so urgent.

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1. Also now referred to as Northern Central America.
2. Doctoral research funded through the Arts and Humanities Research Council.
3. While death threats affected people of all ages from 16 to 50, the majority of those fleeing forced recruitment or involvement in gang activities were in their teens and early twenties, and those fleeing extortion were all in their mid-twenties and included a family group. This suggests that certain activities adversely affect certain demographic groups but could also indicate that some groups are less tolerant of the same level of risk, resulting in different patterns of mobility. For instance, family groups may move pre-emptively even though faced with lower levels of risk from extortion.
4. All quotations are from men from El Salvador, Guatemala and Honduras, ranging in age from 19 to 46, some accompanied by their family with minors in the group.
5. Cantor D J and Rodríguez Serna N R (Eds) (2016) *The New Refugees: Crime and Displacement in Latin America*, Ch 3
6. Mexico's Ley de Migración (2011) makes provision for a humanitarian visa for a foreign national who has been the victim of or witness to a crime while in Mexican territory and for asylum seekers but the latter is not being allowed in practice; see Human Rights Watch (2016) *Closed Doors: Mexico's Failure to Protect Central American Refugee and Migrant Children* <http://bit.ly/HRW-Mexico-2016> and Crisis Group (2016); *Easy Prey: Criminal Violence and Central American Migration*, Latin America Report No 57. <http://bit.ly/ICG-EasyPrey-2016>

Central American refugees: protected or put at risk by communication technologies?

Guillermo Barros

In a world that is more interconnected than ever, many refugees cannot obtain information or communicate when they most need to. Paradoxically, carrying a phone or connecting to the internet can put them at risk if they do not take security measures.

For refugees and other migrants from El Salvador, Guatemala and Honduras – the Northern Triangle of Central America¹ – communication is one of their greatest priorities during their route north. From interviews conducted in migrant shelters in Mexico in 2016, it was clear that many refugees prefer to invest a significant part of their scarce resources in maintaining contact with their families, friends or acquaintances who can assist them on their journey.²

Information is often prioritised even over food or shelter. Most of those whom we interviewed travelled with their own mobile phone or wanted to get one. They also increasingly use apps like Google Maps to source information about countries they are unfamiliar with, and they use social

networking sites, especially Facebook, and messaging services like WhatsApp when possible. They use Facebook primarily to communicate with relatives and other acquaintances who are in their countries of origin or in the United States (US), as well as to contact people whom they think will be able to help them evade roadblocks and who might be able to transfer money to them.

Only five interviewees claimed to have planned – before starting out – a communication strategy for their own protection. Most said they just planned to try to communicate when and where possible. For some who did dedicate time and effort to assess each context and coordinate with their families, it was vital that their relatives knew their exact location each day, so that

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they would be able to launch a more effective search for them in case of loss of contact.

According to those interviewed, their main information needs are: reliable data on areas of greatest insecurity (due to the presence of armed groups); the location of police checkpoints; the cost of bribes they might need to pay at each stage; the characteristics of each place or terrain that they will cross next; and the requirements, procedures and timescales of requesting refuge in Mexico.

Risky communication

Travelling through Mexico with a mobile phone can pose a threat in itself. Mexican criminal groups often kidnap refugees and other migrants who have relatives or connections in the US and force them to provide that person's contact details – who can then be contacted for ransom demands. The mere act of carrying a phone can attract the attention of criminals and lead them to believe that the migrant has relatives who might be susceptible to extortion. Undocumented migrants travelling through Mexico with a mobile phone also run the risk of being confused with a 'coyote' (people trafficker), whether they are intercepted by criminal groups or by Mexican immigration authorities. Criminals attacking a group of migrants will assume that the one who carries a phone is the one who is guiding them to the north. In that case, criminals may require that person to give them a 'fee' for allowing them to guide migrants through the territory controlled by the gangs. This has been the operating model of the Los Zetas drug cartel in recent years.

From the testimonies collected, it seems that borrowing a phone or giving it to another migrant to make a call or send a message can also cause problems. The risk of using the telephone of another migrant is that the number of the relative or other person called is recorded in the device and can be used for extortion purposes. Migrants can take the precaution of deleting the number they have called but do not always do so.

For many of those travelling through Mexico, digital communication is seen as



Mobile phones charging at a shelter for refugees and migrants.

safer than communication by telephone in this context of high insecurity because it does not require carrying a mobile phone or memorising phone numbers. However, some distrust of social networks such as Facebook is apparent; refugees fear that information on their whereabouts may appear on their profiles or in applications that are not completely secure.

Recommendations

Communication can bring enormous risks and yet those providing psychological care in shelters for migrants confirm that the ability to communicate with family members is extremely beneficial to refugees' emotional health, reducing their stress levels significantly.

According to the International Federation of Red Cross and Red Crescent Societies, providing access to information and technology should be of equal priority for humanitarian assistance as providing food, water and shelter. However, there is no coordinated national strategy in Mexico

to support migrants in this way; migrant shelters have limited resources – and each has its own communications policy, so that migrants cannot be sure what means of communication may be available in each place. Apart from a free call service offered by the International Committee of the Red Cross and the Mexican Red Cross to migrants in some shelters, there appear to be no initiatives by the Mexican authorities or by international non-governmental organisations (NGOs) to address migrants' communication needs.

A number of recommendations emerge from our research findings. All actors working to protect refugees and other migrants in transit should prioritise their secure access to information and communication. It would also be advisable to set up a coordination framework between all actors working in the field and with others who could collaborate in certain projects as digital volunteers – that is, online activists organised into networks and located throughout the world who support humanitarian crisis response by collecting and managing data.

For their part, migrant shelters could offer migrants regular access to means of communication, while NGOs could provide workshops at the shelters to promote safe use of telephones and social

networking sites, and could also build websites providing practical and easily accessible information to those in transit.

The Mexican authorities, for their part, could promote humanitarian initiatives in the field of communication – such as providing free and secure telephone lines so that refugees and other migrants can talk to their families. They should also investigate telephone extortion and other similar crimes against refugees and other migrants and their families, and facilitate refugees' electronic access to the status of their asylum or humanitarian visa applications.

Finally, private companies could improve the telecommunication network in migrant transit zones and reduce the price of the phone cards used by refugees and migrants to call people in their home countries.

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1. Also now referred to as Northern Central America.

2. Fieldwork was carried out in September 2016 at migrant shelters La 72 (southern Mexico) and Belén Posada del Migrante (northern Mexico). The sample includes interviews with 40 refugees and other migrants from El Salvador, Guatemala and Honduras, aged between 14 and 53 years.

Unaccompanied children crossing the Darién Gap

Margaret Hunter

While there is much international attention paid to the treacherous journeys of refugees and migrants crossing the Mediterranean Sea, both the media and international aid community have overlooked one of the deadliest migratory routes in the world: the Darién Gap.

I first became aware of the existence of the Darién Gap when I began working in 2015 as a psychotherapist for unaccompanied children arriving in the United States (US). The vast majority of these children were fleeing persecution in their countries of origin and many had crossed into the US from Central America. During the initial assessment and subsequent counselling sessions, the conversations with my

adolescent clients inevitably focused on crossing 'the jungle' between Colombia and Panama. My clients consistently described this stretch of the voyage as the worst part of their migration journey; the desperation and fear that they felt in the jungle was common to all their narratives.

At the northern border of Colombia they discover why the world's longest road – the 48,000-km Pan-American Highway – has a

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100-km break in it: the Darién Gap. The dense jungle of the Darién Gap, which covers part of Panama's Darién Province and the northern portion of Colombia's Chocó Department, separates Colombia from Panama and prevents overland travel between South and Central America. While development has sprung up on the edges of the rainforest of the Darién, the many attempts over the years to build a traversable road have failed.

The dense 100-km stretch of rainforest, with its rugged mountain peaks, swamplands and many deadly species of animals, has served as host to FARC combatants¹ and now hosts drug traffickers. It has also hosted increasing numbers of migrants and refugees attempting to walk across one of the world's most dangerous stretches of land. The total number of people setting out to cross the Darién Gap increased from 3,078 in 2013 to 7,278 in 2014; Cubans and Haitians make up a large percentage, entering Colombia by boat and continuing the rest of the journey through the Darién Gap on foot.²

The trauma of surviving

As a therapist, I had the job of helping my clients to express their experiences of trauma and help them to regain a sense of safety following their journey. Children spoke of seeing the jungle floor strewn with the possessions of other asylum seekers who had grown too weak or sick to carry them; many spoke of encountering dead bodies along the route. Some children spoke of witnessing death at first hand in the jungle; they described fellow travellers who had drowned in the river or died of poisonous snake bites, dehydration and even an attack by a large animal. Many described their personal experience of robbery or extortion by smugglers. Some smugglers promised to lead them through the jungle, claiming that it would only take a day, only to abandon them with days still to walk without food or water. As a therapist, it was profoundly difficult to hear how ubiquitous this trauma was among these children and to see little evidence of aid to the area.

Many of those crossing the Darién Gap qualify as refugees under international

law, and are entitled to protection and assistance. The lack of communication between governments and non-governmental actors and the lack of political will to assist this invisible population can result in such people – some of whom are unaccompanied children – being overlooked, with highly damaging results.

Unaccompanied children are a particularly vulnerable population, and for those travelling to the US from Central America, the experience of the Darién Gap is a formative and crucial piece of their story. Many of the mental health symptoms that I encountered in my client population appeared to stem from traumatic experiences in the jungle. It is an aspect of the contemporary migration landscape that cannot be ignored.

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1. Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia)

2. Miraglia P (2016) 'The Invisible Migrants of the Darién Gap: Evolving Immigration Routes in the Americas', Council on Hemispheric Affairs <http://bit.ly/Miraglia-Darien-2016>

Write for FMR...

We are keen to maintain a balance of policy/practice and research in the pages of FMR, and would encourage practitioners and policymakers to consider what particular area of their knowledge and experience they might usefully share with FMR's global readership.

In each issue of FMR we publish a selection of articles that can be on any aspect of contemporary forced migration as well as a feature theme presenting a range of perspectives around that theme.

Forthcoming themes and deadlines for submissions are listed at www.fmreview.org/forthcoming.

Email us at fmr@qeh.ox.ac.uk about your idea for an article and we will let you know if it is likely to be of interest, and will give you advice on content, style, etc.

Articles can be as short as 600 words, or as long as 2,500 words. You don't have to be an experienced writer – we are happy to work with you to develop your piece.

For more ideas and guidance, please visit www.fmreview.org/writing-fmr.

Youth outreach centres in El Salvador: providing alternatives to displacement

Benjamin J Roth

A growing number of youth are fleeing El Salvador, one of the most violent countries in the world, and travelling unaccompanied to the US-Mexico border. Youth Outreach Centres have been set up in El Salvador to try to improve conditions in their neighbourhoods and encourage young people to stay.

The number of unaccompanied minors from El Salvador, Guatemala and Honduras attempting to cross the United States (US) border has increased dramatically in recent years, growing from 2,304 in 2012 to nearly 47,000 in 2016.¹ Many are leaving their homes because of the threat of violence and fear of gang activity in their neighbourhoods.² Clearly US policy should respond to this humanitarian crisis by recognising these children's legitimate claims to refugee protection but international development efforts must also continue to address in-country 'push' factors. The question is how to do this effectively and efficiently.

Today in El Salvador the problems of poverty, corruption, gang activity, violence and drug trafficking are multi-faceted and intertwined. Poverty and unemployment serve as fodder for gang recruitment, expanding gang territory and escalating crime rates.³ Although its protracted civil war was resolved 25 years ago, decades of instability in El Salvador since then have resulted in underdeveloped civil institutions and limited international support for the resolution of enduring economic and social problems.

Children and youth in low-income families are highly affected by the quality of their communities. Neighbourhood violence and gang activity leave them vulnerable, and youth are at heightened risk of police abuse. Together, these circumstances and neighbourhood conditions put youth at risk of victimisation, gang involvement and other hazards that undermine their sense of hope.

Youth Outreach Centres in El Salvador

The Youth Outreach Centre model is a community-based approach to violence

prevention. Strategically located in neighbourhoods with high levels of violence, the Centres – of which there are over 160 – aim to create a safe space where local youth can play, learn and develop.⁴ Youth come to the Centres before or after school and receive homework help, play games, attend periodic workshops and engage in a range of other activities. Although a given Centre will serve hundreds of youth, the Centres themselves are not large; rather, the model is based on the idea that the Centre should function as a second home (their motto is *mi segunda casa*)



Youth Outreach Centre, El Salvador.

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for the youth they serve. Many are located in small houses with a living room repurposed with tables for homework help, and a small rear patio taken over by a table-tennis table.

Each Centre has one full-time employee – a coordinator, typically a community member who lives down the street – who is supported by numerous volunteers and an advisory board comprising community leaders and representatives from key local institutions, particularly churches.

In 2016 we carried out an independent assessment of the Centres through on-line surveys with coordinators and youth, site visits, focus groups and interviews with funding administrators.⁵

Creating a sense of belonging

Physical safety was a concern for youth and coordinators in our study. Sixty-nine per cent of youth feel very worried or somewhat worried that someone will stop them in the street and threaten or hurt them. A similar percentage is worried for the safety of family

members. Given this context, the success of the Outreach Centres hinges on their ability to provide an attractive space where youth can feel safe. Youth respondents express a strong sense of social connection to the Centre, and the Centres excel at fostering this sense of membership, in part because of the strong social ties between coordinators/ volunteers and youth. As one young man explained: “The attention [I receive there] makes me feel like I’m special, and it’s where they let me say what I think and feel.”



Benjamin J. Roth

Most of the youth believe that at least one adult at the Centre knows them well enough to notice when they are struggling.

Although the Centres do not aim to deter youth from migrating, their success at building trust and relationships – social capital – contributes to improving the neighbourhood conditions which might lead a young person to decide to stay rather than flee.

Building leaders, creating opportunity

Leadership and self-efficacy are important to youth development, in part because they empower young people to take more initiative in directing their own future. Eighty-two per cent of respondents reported that because of their involvement at the Centre they are better able to handle problems and challenges when they arise. Given the level of community violence and gang activity in their neighbourhoods, combined with their own economic situation and high unemployment rates, we would expect them to express a negative outlook concerning their future; instead, the majority indicate that they have a sense of possibility and feel relatively confident that they can shape their future. Importantly, these young people attribute this perspective to their involvement at the Centre.

Involvement at the Centres also has a tangible impact on social mobility opportunities for youth – outcomes that can mitigate against the ‘push’ factors which might drive them to migrate. Thirty-two per cent said that they have found a better job because of the Centre, and 78% reported that the Centre has helped them get better grades in school. For example, one youth respondent said that her homework is easier because of the computer skills she has learned at the Centre. This is a significant contribution to the life chances of these youth and, ultimately, to the stability of their families and neighbourhoods. While we should be cautious about overstating the direct impact that the Centres may have on the school and work trajectories of youth until we complete a more rigorous impact evaluation, it is important to note that the influence they have in these domains is positive.

Intervening with those most likely to migrate

Some of the youth at the Centres face greater risks than others, including gang involvement and substance use. Relative to their lower-risk peers, we find that higher-risk youth are significantly more likely to have plans to migrate. Centre staff often intervene in the lives of these youth. For example, one coordinator explained that he has met with a local gang leader on several occasions to advocate for young men involved in the Centre. This required him to travel into a part of the town that is very violent to petition that a Centre youth be released from his gang ties – a request that could be met with deadly consequences for the coordinator. Other coordinators shared similar examples of when they intervened in the life of an at-risk youth. Because of the complexity of these interventions, additional training and resources are needed to more effectively weave prevention and intervention into the Outreach Centre model.

Expansion and sustainability

Financial support for the Centres differs from one community to the next but nearly all of them receive funding from a combination of sources. USAID provides some financial support until the Centre is functioning, and each Centre receives some level of support from the local municipality. Other community-based organisations help to fund the Centres and serve other important functions, including an advisory role for Centre coordinators. Similarly, local churches may not donate much money but they are central to the model; as one respondent explained, the local church provides “moral authority that protects the Centre” and lends it credibility in the eyes of parents and community members.

The Centres are sustainable because they have low overhead costs but space is often inadequate for serving large numbers of youth or providing wide-ranging facilities. Demand exceeds capacity, and many youth requested that the Centres be open at the weekend as well as during the week.

A viable alternative?

There is no indication that increased border enforcement has slowed the flow of unaccompanied minors from the Northern Triangle⁶ to the US, and building a border wall has historically proven ineffective at deterring unlawful entry. After amending US immigration policy and practice to grant asylum to unaccompanied youth who are fleeing violence, it is imperative that policymakers improve support for development, governance and securitisation in El Salvador, Guatemala and Honduras.

The Youth Outreach Centres in El Salvador are certainly not a comprehensive solution to the complex problems of gang activity, drug trafficking and criminal violence in the region but our study suggests that they represent a viable alternative to the heavy-handed ‘iron fist’ approach – more aggressive police tactics and longer prison sentences – that has been tried unsuccessfully in El Salvador in the past. They operate with the support of the local community in which they are embedded, have a model that easily adapts to the needs of a given locality, and require minimal support to sustain. With additional resources, and together with broader investments in infrastructure and education, the Centres may prove more effective at intervening in the lives of a greater number of youth who are most at risk of deciding that the cost of staying exceeds the risks of migrating.

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1. <http://bit.ly/US-border-stats-2016>
2. UNHCR (2014) *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* www.unhcr.org/uk/children-on-the-run; Kennedy E (2014) *No Childhood Here: Why Central American Children are Fleeing Their Homes*, American Immigration Council <http://bit.ly/Kennedy-2014-CAchildren>
3. Shifter M (2012) *Countering Criminal Violence in Central America*, Council on Foreign Relations <http://bit.ly/CFR-Shifter-2012>
4. The Centres are part of a wider USAID-supported crime prevention effort in the region.
5. A total of 77 individuals participated in interviews and focus groups.
6. Also now referred to as Northern Central America.

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Accompaniment by the Catholic Church

Ashley Feasley and Todd Scribner

The Catholic Church is developing various initiatives to assist those fleeing violence in the Northern Triangle of Central America.

With its extensive network of religious orders, local and diocesan organisations, and research institutes, the Catholic Church is one of the principal institutions engaged in accompaniment efforts in the Northern Triangle of Central America¹. For example, local Catholic leaders have worked with Protestant leaders to develop lines of communication between rival gangs in El Salvador, including the facilitation of a recent truce between competing parties.² Catholic Relief Services, meanwhile, provides school re-entry opportunities, job training and social services to boys and girls in areas of low economic opportunity and high violence. And a variety of Catholic welcome centres – shelters – are located throughout the region to provide support to migrants along their journey.³

The Catholic network faces three challenges in particular: firstly, ensuring communication with what is an extremely mobile population; secondly, the need for institutional mapping of services; and, thirdly, scaling up the capacity of the existing network. With respect to the first challenge, a central difficulty is the temporary nature of the relationship. Some migrants will remain in a shelter for only a few hours, others for a night or two. However long they stay, once they leave there are few mechanisms for providing continued support over the course of their journey.

A promising new effort to promote continued communication with migrants was recently launched under the oversight of Fr Juan Luis Carbajal, a Scalabrinian priest in Guatemala City. Fr Carbajal is employing technology to allow advocates to track migrants as they are in transit. Before migrants cross the border from Guatemala into Mexico, Fr Carbajal's team collects a wide range of demographic and personal information about each migrant, uploading it to a central database; this information will then be accessible to shelter workers via an app available for download by administrators

at the shelters.⁴ With this, they can anticipate arrivals and needs, and also keep track of migrants as they move from the Guatemalan border and arrive at their next transit point in Mexico or elsewhere. Over time, this information could provide a wealth of information that could be used to better understand migration trends and practices. It could also be put to more practical uses including, for example, in family tracing efforts.

For assistance to be provided more effectively, there need to be open lines of communication between centres and a clear understanding of where such centres are located, who runs them, and how they can more effectively share information. In relation to this, the Catholic Center for Migration Studies in New York and the Scalabrini International Migration Network are trying to systematise data collection from the Scalabrini shelters across Mexico and Central America. The problem confronting the international community with respect to forced migration situations is bigger than any one institution can tackle. Ultimately, better collaboration among Catholic service providers and between Catholic groups and their non-Catholic religious and secular counterparts would significantly improve efforts to engage and protect migrant populations.

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1. Also now referred to as Northern Central America.

2. International Crisis Group (2017) *Mafia of the Poor: Gang Violence and Extortion in Central America* <http://bit.ly/ICG-Mafia-2017>

3. See article by Alejandro Olayo-Méndez in this issue.

4. To date, the app has primarily been used in Guatemala but its use is being expanded into Mexico. Testing of the app will include ensuring the security of individuals' personal information.

Colombia: durable solutions for the forcibly displaced

Amaya Valcárcel and Vera Samudio

Colombia has a sophisticated body of law and a wealth of experience in the development of policies for the forcibly displaced. However, numerous obstacles stand in the way of attaining permanent solutions to displacement.

In late 2016 the peace agreement between the government and FARC-EP¹ was finally signed. According to official figures, the war has left 8,405,265 victims, 80% of whom have been internally displaced, while 20% have been victims of other types of abuses such as attacks, homicides, threats or forced disappearances.² In addition, according to UNHCR, the UN Refugee Agency, about 340,000 Colombians have sought asylum abroad.

The rights of victims

Various policies introduced in Colombia over the last 20 years, relating to displacement, offer examples of good practice that could be relevant to other countries in the region.

Firstly, Law 387 of 1997 laid down for the first time the basic principles underpinning the State's treatment of displaced people. In essence, this law recognises forced displacement as a significant and critical problem deserving priority attention by the State.

Secondly, Constitutional Court Judgment T-025 of 2004 orders national and regional entities to address the basic needs of displaced persons and any violations of their fundamental rights such as access to health, work or housing. This judgment sees forced displacement as a structural problem which needs to be addressed in an integrated way. For this reason, the authorities in all places hosting displaced people – that is, not only national-level authorities – are required to promote strategies for addressing the impacts of displacement. Follow-up policies have set guidelines for both national and local authorities relating to, for example, the need to allocate adequate resources for displaced populations, to recognise the particular vulnerabilities of women, children, adolescents and young adults

in situations of displacement, and to take into account the impact of displacement on indigenous peoples, people of African descent and persons with disabilities.

Thirdly, Law 1448 of 2011 (the Victims and Land Restitution Law) enables victims of the armed conflict to receive assistance and reparation. This recognises victims' right to access truth and justice, and establishes concrete reparation measures including a programme of restitution so that victims of forced displacement and dispossession can reclaim the lands they have lost.

Policy shortcomings

In spite of these important developments, implementation has been fragile. The living conditions of victims have not improved as expected; further unrest in certain locations is hindering provision of assistance, rebuilding and reparation; and the lack of funding is only too evident.

Policies have focused more on provision of welfare, rather than on enabling people to develop strategies for addressing vulnerability and moving towards self-sufficiency. According to Colombia's Monitoring Commission³, in 2016 the income levels of 97.6% of victims were still below the poverty line, and thousands of victims still do not have access to essential medical services, good psychosocial care, educational opportunities or a decent home. Furthermore, by 2015, the funds available under the reparation fund were reduced, thereby diminishing the fund's capacity for supporting reparation.

With regard to Colombians abroad, the Victims Unit has registered only 10,652 people from 42 countries. Many more nationals abroad are not getting access to assistance and reparation – their right as Colombian citizens. Many of them are not officially

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recognised as refugees and are in an irregular situation in their host countries.

The challenges ahead

*"I am still displaced and suffering... My family and I are still struggling."*⁴

There are a number of concrete actions needed if there are to be more effective durable solutions for Colombia's displaced people.

Efforts must continue to identify and protect those who have not yet been registered in the Colombian Registry of Victims, especially in rural areas that are difficult to access. The authorities need to raise people's awareness of how to be included in the registry and how to participate in Victims' Panels (whether in Colombia or abroad). Local institutions need greater capacity building and finances in order to be able to address the needs of victims. Although there is a normative framework⁵ that provides for the participation of victims, their participation in the consultative and decision-making processes has not been fully guaranteed and promoted.

The government needs to introduce measures to dismantle paramilitaries and local armed groups and to finalise a peace agreement with the ELN⁶. The ongoing presence of these armed actors continues to generate hundreds of victims daily, and poses a particular problem for the inhabitants of the port of Buenaventura and the Department of Chocó in the Colombian Pacific corridor. At the same time, the government needs to introduce protection schemes and security guarantees for social leaders and human rights defenders, who continue to be targeted.

The government also needs to recognise – and legislate for – the scale of forced displacement associated with large-scale development projects, illicit economies (including illegal mining) and environmental impacts.



A mobile registration unit in Colombia issues ID cards to IDPs so that they can access government aid.

Finally, these changes will only be effective if they go hand-in-hand with a change in the political culture which is currently rooted in a system whereby regional capitals receive greater attention at the expense of more remote areas and which currently is too reliant on corruption and patronage. A substantial change in the understanding of the roles and responsibilities of national and regional entities is essential if Colombia is to become a country free of conflict.

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1. Revolutionary Armed Forces of Colombia – People's Army (Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo)
2. <http://rni.unidadvictimas.gov.co/RUV>
3. Comisión de Seguimiento y Monitoreo a la implementación de la Ley 1448 de 2011 Ley de Víctimas y Restitución de Tierras
4. Testimony provided by JRS Colombia.
5. Article 28 and 192 of Law 1448 of 2011, Article 17, Decree 4802 of 2011, Decree 790 of 2012, Resolution 0388 of 10th May 2013, and Resolution 1281 of 2016.
6. National Liberation Army (Ejército de Liberación Nacional)

Colombia: time to invoke the cessation clause?

Beatriz Eugenia Sánchez Mojica

After more than five decades of internal armed conflict, in November 2016 the Colombian government signed a peace agreement with the FARC-EP. Does this mean that those Colombians who had been forced to leave the country must now begin to return?

International refugee protection – as well as other forms of international protection – is designed to be temporary. The ‘cessation clause’ included in the 1951 Convention Relating to the Status of Refugees, its Protocol and other international instruments in this area provides for four scenarios in which international protection may come to an end.¹ One of these occurs when the country of origin experiences a profound change of circumstances which is significant enough to remove the causes that prompted its people to flee. Once those causes vanish, host countries (and UNHCR, the UN Refugee Agency) can declare the end of the provision of international protection and require the refugees to return, while the country of origin is obliged to resume its responsibility for their protection. The question now arises as to whether the signing of the peace agreement in Colombia will entail the cessation clause being invoked by countries that host Colombians either as refugees or as beneficiaries of some other type of international protection.

According to UNHCR’s interpretation, the change of circumstances requires the conjunction of three elements. Firstly, it must be sufficiently profound to resolve the causes that caused the displacement. Secondly, it must be sustainable over time, guaranteeing that those who return will not be forced again to flee. And, lastly, those who return must have effective access to protection in the country of origin.²

These conditions are not currently present in the Colombian case. Forced displacement in this country has multiple causes, and the government’s peace agreement with one of the guerrilla forces – the FARC-EP³ – does not necessarily resolve all the factors that caused the displacement, nor does it imply the full establishment of conditions

of security for the return of exiles, as vast territories of Colombia are now controlled by violent criminal gangs.⁴ Moreover, there is still one guerrilla group active, the ELN.⁵

Reasons to invoke cessation

UNHCR’s interpretation, however, is not binding in law. Host countries may choose to ignore it and invoke cessation. In the case of those countries hosting the largest numbers of Colombian refugees (Venezuela, Ecuador and Panama), there are good reasons why this might be a strong possibility.

Venezuela, which by December 2016 was hosting nearly 173,000 Colombians, has been experiencing a profound economic and political crisis. The Venezuelan authorities may therefore be tempted to get rid of a population that consumes public resources and is perceived as responsible for increased insecurity. The mass expulsion of Colombians in an irregular situation that took place in August 2015 reflected these sentiments.

Ecuador, hosting over 101,000 Colombians, is facing economic difficulties too; it has asked for help from the Colombian government in order to be able to continue offering protection to the refugees, and has taken steps to prevent the increase in size of this population. In 2012, for example, Ecuador’s laws were modified in order to restrict the concept of refugee.⁶

Finally, Panama, which hosts just over 17,000 refugees, is experiencing an economic slowdown, according to the World Bank, and in the past has cited the size of the burden it carries in caring for and protecting Colombian refugees.

Additionally, it should be noted that in the past, Ecuador and Venezuela were particularly open to the arrival of Colombian refugees because of the heightened tension between them and their neighbour Colombia. Nowadays the dynamics

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of these relationships have changed, diminishing the political and strategic value of taking in Colombian refugees.

Guaranteeing protection

Colombia's Binational Commissions with Ecuador, Costa Rica and Venezuela and its Neighbourhood Commission with Panama offer opportunities for the government to negotiate agreements in order to avoid the imminent invocation of cessation. Through the Binational Commission with Ecuador, agreements have already been reached regarding the care of this population and the implementation of a voluntary return plan. It is essential, however, to expand negotiations and to speed up the decision-making process, not only to avoid the cessation clause being invoked but also to reach agreements on how to ensure the well-being of those who, at the time, had no choice but to leave their country or lose their lives. Joint voluntary return plans will increasingly be needed as Colombia's situation stabilises and becomes more conducive to offering a safe return for those who wish it.

UNHCR has an important role to play in all this. Firstly, it is UNHCR's job to monitor compliance with the guidelines relating to cessation. Secondly, UNHCR can facilitate

negotiations between the States. And, finally, UNHCR can support voluntary return schemes, reminding national authorities that the population choosing to return must be fully informed of the conditions they will encounter in Colombia, and that their security and rights must be fully guaranteed.

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https://humanities-center.ie.edu/dt_team/851/

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2. UNHCR (2003) *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the 'Ceased Circumstances' Clauses)*, HCR/GIP/03/03 www.refworld.org/docid/3e50de6b4.html
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Colombia's ex-combatant children and adolescents

Stephany Armas Contreras

Large numbers of children and adolescents recruited into the armed conflict in Colombia are now being demobilised. Lessons from the peace process of 2003-08 could usefully inform today's transitional justice process, in particular with regard to reintegrating ex-combatant minors into civilian life.

The risk of recruitment of minors by armed groups has been a significant cause of displacement in Colombia. In 2008, it was estimated that between 8,000 and 13,000 children – with an average age of 13 – had been recruited by guerrilla groups and paramilitaries.¹ Faced with the risk of their children being recruited, entire families and communities were forced to move, either because some members

of the family or community had already been recruited or because they had been threatened with recruitment. Many minors also had to flee after deserting armed groups, escaping persecution or reprisals by moving to other places.

Clarification of the truth

Colombia's transitional justice process aims to facilitate the end of the internal armed



UN Migration Agency (IOM)

A vocational training project in Santiago de Cali, Colombia, supporting ex-combatant children.

conflict and to achieve a stable and lasting peace with guarantees of non-repetition, as well as guaranteeing the rights of victims to truth, justice and reparation. In the search for reconciliation, one of the main objectives of transitional justice is clarification of the truth, and those children who were combatants must contribute to this process, both as victims and as perpetrators. Truth is a mechanism for reparation – for the community and wider society and also for individuals, including child ex-combatants.

However, in Colombia's experience of transitional justice mechanisms, ex-combatant children have been seen solely as passive victims, exempting them from any responsibility for acts perpetrated when they were combatants. This reductionist policy does not allow for a proper understanding of the socio-historical causes of the recruitment of minors – causes which, if not addressed, can hinder their successful reintegration into civilian life.² If not effectively reintegrated, ex-combatant children may be re-recruited or put at risk in other ways

– and may themselves put others at risk. In addition to not contributing to the truth, this approach has excluded child former combatants from the country's reconciliation and historical memory initiatives.

Unlike in the previous peace process, a Truth Commission has been created as part of the ongoing peace process with FARC. This Commission aims to clarify what happened, contribute to the recognition of victims and to individual and collective responsibilities, and promote peaceful coexistence. Both victims and perpetrators will participate in the Truth Commission. In addition, a Thematic Committee on Children and Adolescents has been established which will be able to provide a specialised approach to the needs and rights of ex-combatant minors.

Access to justice

Access to justice is also an important component of transitional justice processes, and recognition of responsibility is essential. In the particular case of child and adolescent ex-combatants, the responsibility of those who

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forcibly recruited minors must be recognised and addressed, as must the responsibility of ex-combatant children who have victimised others during their time as combatants. Both are important in terms of the fight against the impunity of the perpetrators of child recruitment, and as a contribution to the reconciliation processes.

During the demobilisation of the AUC³ in Colombia's previous peace process, there was no oversight of the process of demobilising child soldiers; those who demobilised tended to do so informally, with little support or planning for their reintegration into civilian life. The commanders responsible for the crime of child recruitment evaded responsibility and criminal conviction. These factors undermined the children's ability to participate in official demobilisation, disarmament and reintegration programmes, and their right to justice.

In relation to the recognition of the responsibility of ex-child soldiers, it is important to distinguish between moral responsibility and criminal responsibility. The Rome Statute of the International Criminal Court states that "The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime."⁴ But above and beyond criminal responsibility, it is important that in the process of reparation for victims, child soldiers should not be seen as passive victims; they should also be able to recognise their moral responsibility and to participate in reparative activities in their communities.

The mechanisms established for the participation of children and adolescents should be legally recognised and appropriate, respecting the voluntary nature of participation, ensuring that children are able to make informed decisions (and supported in doing so) and providing conditions of safety, both physical and psychosocial.

Reparation for ex-combatant minors

The process of reparation for child victims of armed recruitment must be comprehensive. This process should include provision for education, livelihood projects, psychosocial care and health care. The objective of

reparation must be not only compensation but also transformation of the conditions that brought about their vulnerability to recruitment – most frequently, conditions of poverty, abuse and loss of family members.

In this regard, there is much to learn from failings of the earlier demobilisation process. For example, the 2005 Law on Justice and Peace provided only for compensation, and not for transformation; with no changes made to remove the original conditions under which recruitment occurred, there was inevitably new recruitment – and new displacement of children avoiding being co-opted by armed groups.

The Constitutional Court, in its judgment T-025 of 2004,⁵ had argued that the recognition and protection of children separated from armed groups was fundamental to avoiding repetition, citing figures indicating that 9.7% of children who had left an armed group would eventually return to an armed group and that 79.4% had received threats from the armed group to which they belonged, 7.6% had been threatened by another non-State armed group and 1.2% by the army.

The 2005 report of the Coalition against the involvement of boys, girls and youth in the armed conflict in Colombia⁶ drew out the following two lessons in particular from the process of reintegration at that time:

- The provision for education and work programmes in no way met the needs and expectations of young people.
- The processes to reintegrate young people into civilian life focused only on the individual, with no attention to the wider social conditions which might have led to the stigmatisation and exclusion that encouraged recruitment in the first place.

Some of the lessons seemed to have been learned. In the current peace process, within the framework of Law 1448, the Victims and Land Restitution Law, measures are being taken to provide a holistic package of care, assistance and reparation to the victims of the conflict – legal, administrative, social and economic measures. Another example of good practice is the launch of the Camino Diferencial de Vida (Different Way of Life)

programme for the reintegration of former child soldiers; this, unlike the approach taken before, has a solid focus on restitution of rights, community reconciliation and building the social fabric of society.⁷

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New drivers of displacement in Colombia

Alfredo Campos García

Violence and displacement have not ended with the signing of the peace agreement in Colombia.

The recent signing of a peace agreement between the government of Colombia and the country's largest guerrilla group, FARC¹, fired hopes of finally achieving a stable and lasting peace. However, the actions of other armed groups pose a serious threat to achieving this objective. This is particularly evident in the southwestern region of Colombia, where there is a widespread presence of illicit crops and businesses, and armed actors such as the demobilised FARC, ELN² and large criminal gangs (referred to as BACRIM, from the Spanish *bandas criminales*, or more recently as Organised Armed Groups). The whole region constitutes a corridor for the transit of these groups and the products which they traffic, since it connects the mountain range and the production or extraction zones of southwestern Colombia with the Pacific ports and main routes of exit.

Since the signing of the peace agreement, other armed groups have moved in to occupy the ground abandoned by FARC. Armed clashes between government forces and ELN are accompanied by serious violations of human rights while also causing massive displacement of entire communities, such as that of the Wounaan ethnic group from

the Taparalito community. And the illegal activities of criminal gangs and other paramilitary gangs give rise to their own social and environmental problems.

The withdrawal of FARC and subsequent emergence of ELN in the department of Cauca has had some perhaps surprising negative repercussions for the local population. In the territories it formerly occupied, FARC at least had some authority and, for example, would warn the civilian population where mines had been laid. With FARC's withdrawal, this peculiar work of 'guardianship' towards the population has ceased.

For these reasons, many internally displaced people in southwestern Colombia are now being forced to leave the country, for Chile or Ecuador or even further, to North America or Europe.

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Land restitution in Colombia: why so few applications?

Frances Thomson

Halfway through Colombia's official land restitution process, questions arise as to why the number of claims is so much lower than anticipated.

The Victims and Land Restitution Law (Law 1448 of 2011¹) offers Colombia's displaced population a new route for reclaiming their land. It has received praise and criticism in almost equal measure, but there is one overarching concern: the low number of applicants. In 2012 Colombia's Ministry of Agriculture and Rural Development estimated that 360,000 cases of either land abandonment or land usurpation would be considered for restitution under the new Law.² But more than half way through the process (the Law expires in 2021), the number of land claimants is less than a third of what was projected in 2012: as of August 2017, the Land Restitution Unit had received 106,833 applications. It seems that the majority of people who may be eligible for restitution have not even applied. Why?

Land Restitution under Law 1448

Under Law 1448, those who were dispossessed in the context of the armed conflict (due to usurpation or forced abandonment) can apply for restitution or the legal and material return of their land. The Law also permits families who did not formally own their land at the time of their displacement (but were legitimate occupants or possessors) to receive a property title as part of the restitution process (Article 72), and promises institutional accompaniment and support – such as subsidies for acquiring or rebuilding homes – for all those who were displaced, whether they choose to return or resettle elsewhere (Article 66).

Law 1448 offers a number of safeguards not found in ordinary legal processes. For example, it allows for the use of varied and unconventional types of evidence to back restitution applications given that applicants have often lost relevant papers due precisely to their forced displacement. Furthermore, the Law presumes the absence of consent in land transfers between the victim(s) and anyone who has been convicted of belonging to,

collaborating with or financing illegal armed groups. The Law also allows judges to presume that a land transaction was not consensual (unless evidence suggests otherwise) when the amount actually paid or noted in the contract was less than 50% of the 'real value'. The same rule applies when mass forced displacement, grave human rights violations or acts of generalised violence occurred in the surrounding area and during the same time period as the alleged incident (threat or act of violence) that led to the usurpation or forced abandonment. If a transaction is not proven to be consensual, the transfer itself and any subsequent agreements that affect the plot of land in question can be considered invalid (Article 77). In short, the Law inverts the 'burden of proof' in favour of the claimant.

The Land Restitution Unit is charged with helping victims to document their case to submit for judicial review or must sub-contract a lawyer to this end. In general, the victim does not have to pay any legal fees. Specialist judges, who are familiar with land usurpation issues, are responsible for the legal decision.

It is evident that the Colombian land restitution programme, as defined by Law 1448, has many strengths, in addition to a number of weaknesses not discussed here. People working in other contexts may find there is a lot to learn from the Colombian experience, both good and bad.

Failure to attract applicants

There are numerous reasons for the lack of applications including: lack of trust in the authorities, especially in areas where they had/have links with armed groups; disillusionment with government agencies based on prior personal experiences or those of friends and family members; absence of awareness or limited understanding of the Law; or difficulties accessing the relevant institutions for various reasons, including travel distances and costs.³

In a meeting with people from a village in the municipality of Pensilvania (Caldas department), few seemed to be aware of the support available to returnees or the fact that restitution applies to abandoned (and not only usurped) land. One man claimed that the functionaries responsible “didn’t want to take their declarations” – to which a few neighbours nodded agreement. Another woman said she had walked eight hours to the municipal centre only to be turned away because everyone was too busy.

Javier,⁴ a leader from another municipality, who supports victims across the coffee-growing region, emphasised people’s lack of confidence in themselves and in the government’s will or ability to respond to their claims:

“I know how to defend myself when I speak but there are people who feel too uncomfortable, and they don’t have a way to say: ‘Look, they took my land, and I have this problem’ [...] and there are a lot of people who don’t believe in the State.”

But perhaps the most urgent threat to the restitution process is the attempt to crush it using violence. At least 72 land restitution claimants and leaders have been murdered, and thousands more have received threats against their lives. In some cases, the displaced are forced to flee their homes once again because of their involvement in restitution processes. Representatives from accompanying organisations and human rights defenders, as well as state officials involved in restitution cases, have also been targeted. Paramilitary ‘successor groups’ are responsible for the majority of crimes against land claimants and restitution leaders, as is well documented and widely acknowledged.

“In all of Caldas there is dispossession but there is more fear than dispossession. There are many that have told me [in response to suggestions that they should apply for restitution]: ‘definitely not, because my mother doesn’t want any more problems – we already had so many problems when they took us from the land’.” (Javier)

The police, who are supposed to provide protection for those under threat, often neglect their duties and government officials

frequently dismiss community members’ denunciations. Investigations into the violence and intimidation surrounding land restitution processes have been, at best, half-hearted.

Following numerous threats and attempts against his life, Javier – along with thousands of other people – solicited help from the National Protection Unit. He claims the protection offered is inadequate:

“I know, I am certain, that the threats are because of my leadership in the restitution process, because there are a lot of very powerful people with many interests in keeping that land. And the threats are clear: ‘leave the victims and land restitution [issue] alone or die’. At this moment the protection we have is a bulletproof vest and a telephone that doesn’t work.”

Law 1448 offers multiple mechanisms to help Colombia’s internally displaced population rebuild their lives. However, many displaced people who would like to return to their lands are too scared to seek State support, while others have returned without institutional accompaniment due to a lack of understanding of their rights or to difficulties accessing the relevant institutions. If the majority of eligible people do not even apply for land restitution under Law 1448, this in itself would represent a failure for Colombia’s transitional justice process.

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Colombia's displaced indigenous women

Gina Escobar Cuero

Indigenous peoples are one of the most vulnerable groups within Colombia's internally displaced population, and a lack of understanding of their culture and needs constitutes a major challenge to their protection and assistance.

Of Colombia's estimated population of more than 49 million, 1.5% are indigenous peoples. Under the Constitution of 1991, indigenous peoples are entitled to own the lands where they practise their culture. These indigenous territories, which are usually located in isolated parts of the country, tend to be rich in natural resources – and therefore attractive to different actors involved in Colombia's armed conflict. Over the years, increasing numbers of indigenous peoples have been displaced by violence or threat of violence.

Losing their territory is a major problem for indigenous peoples. Communities are divided and families separated. In many cases, indigenous women end up alone and/or as heads of household after their partners are killed. Afraid of being found by the perpetrators, many flee towards the cities where they are forced to settle in slum conditions. All of these reasons contribute to the "...de-structuralization of entire communities and the risk of disappearing as distinct and different peoples."¹

The case of Zenu women

Zenu indigenous people are mainly located in the north of Colombia. Their principal economic activities are the production of handicrafts and the exchange of agricultural products with other indigenous groups. Within the family, women are responsible for the creation of a garden known as *el patio* where vegetables, fruits, medicinal plants and domestic animals are kept for the use of the family. From a community's perspective, women help create a 'reservoir of biodiversity', with some *patios* reported to include as many as "...28 species of vegetables, 30 species of fruits and more than 70 species of medicinal plants".² Women are also responsible for traditional medicine and knitting. In these ways, Zenu women

have a great impact on the survival of their communities – and land is crucial to their role.

In displacement, the role of Zenu women changes abruptly. In many cases they face challenges such as lack of housing, food security, education and employment. Since many Zenu women have little more than primary-level education, most employment opportunities for them are lowly paid and temporary, and nearly all displaced women and families are forced to live in rental accommodation. Lack of land to create a *patio* compromises the family's food security, and the need for women to work outside the home affects their ability to take care of their children – which leaves the children more at risk of becoming involved in gangs. In this manner, internal displacement drastically changes the role of Zenu women and compromises the survival of the whole community.

Inadequate government response

Colombia's Law 387 of 1997 was designed to prevent internal displacement and assist those who had been displaced. Each of the country's 32 departments was expected to decide its annual budget for implementing relevant programmes but the lack of government oversight has led to wide variations in implementation and hence in the assistance provided. In the case of indigenous people, local governments have failed to understand and address their specific needs.

In order to access assistance, Internally Displaced Persons (IDPs) need to register with the Colombian Registry of Victims. If successfully registered, IDPs have the right to receive Emergency Humanitarian Aid which aims to cover their immediate basic needs; a second stage concerns economic and social stability for which income generation and housing assistance are available. Findings

from interviews with Zenu women from the Pasacaballos community in the city of Cartagena indicate that the registry system makes it difficult for indigenous women to access aid. These difficulties proceed from circumstances including women having been displaced more than once and no longer being eligible for assistance.

For those who have received aid, it has generally been insufficient, of poor quality or delayed. For instance, some women received financial assistance to cover their rental costs two years after requesting help. Another woman was promised financial assistance but received part of the payment in the form of food (of poor quality), four chairs and a set of spoons. Many years later she is still owed 40% of the funds promised. This type

of assistance represents a waste of resources for the government considering that it does not provide women with the tools they need.

Poor organisation of assistance by the government and a lack of understanding of the real needs of displaced indigenous women are proving damaging both to the short-term survival of internally displaced Zenu women and their families and to the longer-term survival of their community and culture.

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Triggers of internal displacement in Guatemala

Sindy Hernández Bonilla

More than 20 years since the end of the civil war, Guatemala is once again experiencing an upsurge in internal displacement. The causes are multiple, and demand attention.

The signing of peace agreements in 1996 ended 36 years of civil war between the Guatemalan government and the Guatemalan National Revolutionary Unit.¹ An estimated 200,000 people were killed during the war, while about one million people were internally displaced or fled the country. More than 20 years have passed since the end of the war but today this Central American country is again experiencing high levels of homicide and generalised violence, with significant levels of new displacement.²

At the time of negotiating and approving the Peace Accords, including the Agreement for the Resettlement of Uprooted Populations by Armed Conflict³, the government introduced economic structural adjustment measures. Although some progress has been made, there has been little impact on economic inequalities. For example, there has been no comprehensive fiscal reform, so the State has few resources to invest in education, health, social protection, housing and job creation. The indigenous population continues to be denied their rights

and access to the justice system. And in terms of compensation, lack of state resources means that few families who were victims of war have received comprehensive compensation.

All this, combined with the uneven implementation of the peace agreement's provisions, has led to a deepening of inequality and poverty in the country and to greater State fragility, providing fertile ground for armed groups, criminal gangs, organised crime and drug trafficking. Guatemala currently has high rates of crime, creating fear and uncertainty in the general population.

Research undertaken in 2016 identified a wide range of factors driving internal displacement in Guatemala: violence, extortion and threats; organised crime and narco trafficking; the expansion of large-scale business activities (such as the cultivation of sugarcane and oil palm, cattle raising, mining and hydroelectricity production); and natural and climate-related events. Added to these are other risk factors that trigger forced migration, such as the deterioration

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and exacerbation of social inequality in access to health, education, housing, livelihoods and land (with the most affected being those living in rural and marginalised areas), and the predominance of the patriarchal system.

The expansion of large-scale business has reduced areas for food crops, which has led to the displacement of families and sometimes entire communities in the northwest of the country. This situation has in turn placed these people at risk of disease and malnutrition, with little or no access to livelihoods. Their vulnerability is further exacerbated by violence, intimidation and land grabbing by big business, and by the environmental damage done to the land, particularly to water sources by contamination, overuse and diversion of rivers.

Such businesses benefit from a weak State, from corruption and inefficiency, but also from the close ties that some companies have with mafias and State institutions. This situation has left communities unprotected. Some resist (such as those who protest against mining and hydroelectric projects), while others choose to sell up and look for somewhere else to live – often leaving for their own survival.

Guatemala's geography and location make it vulnerable to climatic and natural events (storms, volcanic eruptions and earthquakes) that have led to forced displacement. This situation is aggravated by the lack of land use planning, deforestation, poor oversight of housing, housing shortages and poor prevention and preparedness measures. The people most affected are those already living in poverty. When such events occur, affected populations receive emergency care but no longer-term assistance.

From indifference to investment?

In sum, there are many reasons that promote internal forced displacement in Guatemala, yet there is little State recognition of the underlying problems. Those displaced by violence live in constant fear of being found by the perpetrators of violence, and consequently mistrust other people and public officials. This scenario makes it extremely difficult to secure data about displacement, while the undercurrent of fear discourages people from lodging complaints, which in turn hinders

the investigation and punishment of criminal acts and fails to stop them being repeated.

The government needs to demonstrate its willingness to address the structural aspects that are currently causing displacement. It urgently needs to undertake a system-wide evaluation (with the participation of civil society) of public policies and of prevention and care programmes targeting displaced people; there needs to be greater investment in improving the living conditions of the poorest and most excluded populations – those located in rural areas and precarious urban settlements – with specific approaches for children and adolescents, women and indigenous peoples. A national development plan is needed, one that benefits the more vulnerable populations, seeking to eradicate poverty and malnutrition, ensure access to the school system and employment, and promote the sustainable management of the land. This does not require starting from scratch since there already exist initiatives that can be revisited.⁴

The State also needs to develop procedures to regulate expansionist and extractive business activities, and in doing so should focus on questions of legality, social conflict, environmental impacts, repercussions on food production, the role of public officials and their relationship with business, and the actions of local authorities that violate communities' right to be consulted. Above all, the government should analyse whether these business activities are appropriate for the country in social, environmental and economic terms, both in the short and the long term.

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Falling short of protection: Peru's new migration scheme for Venezuelans

Nicolas Parent

Peru's introduction of a new work and study permit for Venezuelans fleeing violence in their country is to be applauded – but it provides only a limited, temporary form of protection.

State repression, looting and civil violence have left Venezuelans in a state of uneasiness and fear, with the erosion of the country's socio-political stability further exacerbated by shortages of food and medicine, crippling inflation and a dramatic devaluation of the Venezuelan currency. With each passing day, as the situation deteriorates, the applicability to Venezuelans of the international definition of refugee becomes increasingly justifiable.

In addition to both the 1951 Refugee Convention and its 1967 Protocol, to which the vast majority of Latin American countries are signatories, the continent has demonstrated a coordinated effort to strengthen its regional framework for the forcibly displaced. The Cartagena Declaration in 1984, the 1994 San José Declaration, the 2004 Mexico Declaration and the 2014 Brazil Declaration all serve as testaments to a commitment to protecting those with well-founded fear of persecution. The response to those fleeing Venezuela, however, exemplifies how much there remains to achieve, particularly in terms of the implementation of these instruments. For instance, despite receiving 4,670 requests for asylum from Venezuelans between 2012 and 2016, Brazil's Ministry of Justice has only assessed a total of 89 applications.¹ For those wanting to flee to Colombia, a different challenge arises, where regular border closures and violence in its eastern region have impeded Venezuelans from seeking asylum.

Protection options

Of all Latin American countries hosting Venezuelans, Peru merits recognition for its new temporary work/study permit scheme. The Permiso Temporal de Permanencia (PTP)² is a work and study permit provided exclusively to Venezuelan citizens for a period

of one year, with the possibility of renewal. The new programme has been praised by the international community, including by the Inter-American Commission on Human Rights which has called it "an example for the region of how States can protect migrants who are in a vulnerable situation by regularizing migration."³ According to Eduardo Sevilla Echevarría, Superintendent of Migration, over 10,000 Venezuelans have been approved for the PTP as of late July 2017.⁴

However, it appears that migration officials may be promoting the PTP in place of providing information about other more durable and wider-ranging protection pathways. This was the case for José, a former business owner in Venezuela. When passing through border control at the airport in Lima, José notified the migration officer that he wished to apply for asylum but "they said I was only eligible for the PTP." Considering that Peru has national asylum legislation dating back to 2003,⁵ it is surprising that Lima's migration office failed to provide adequate information about asylum procedures.

Testimonials from applicants and beneficiaries around Lima suggest that José is not the only Venezuelan being misinformed on their right to seek asylum. When María applied for the PTP, she noticed that it did not explicitly guarantee access to certain rights that would normally be accorded to refugees. "I fled from an area with heavy violence in Venezuela and I was aware that, with the expanded refugee definition found in the Cartagena Declaration, I would probably be eligible for refugee status," María explained, adding that she did not necessarily want to receive formal refugee status but rather wanted to have a legal guarantee that she

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and her children would have access to health facilities and basic assistance. However, after multiple visits to the migration office and numerous telephone conversations with UNHCR staff members (who were unclear about the overlap between the PTP and Peru's asylum legislation), she – like José – had to accept the PTP as her only option.

Implementation falling behind international standards

Latin America is widely recognised for having developed some of the most innovative protection mechanisms for forced migrants. At the forefront has been the 1984 Cartagena Declaration, setting the stage for a multitude of regional dialogues focused on international protection. However, it is also critical to acknowledge that these declarations, plans of action, recommendations and conclusions are largely non-binding, and that in Latin America “most of the existing refugee status determination bodies still lack the training, efficiency, independence, and expertise that are to be found in other parts of the world.”⁶ Furthermore, since the end of the 1990s Latin American governments have devised asylum legislation at the national level but these instruments tend to “fall short of international standards in terms of duration and scope of protection [and] lack important refugee rights such as the right to access fair and efficient refugee status determination procedures.”⁷

Peru is not exempt from these realities and although the PTP has allowed many Venezuelans to gain safety, there needs to be a debate about whether or not it is meeting its responsibilities towards those Venezuelans whose cases should rather be decided through a proper refugee status determination process. Considering that the 1984 Cartagena Declaration expands the definition of what constitutes a refugee, extending this status to those fleeing their country due to “generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”,⁸ the abundant

evidence on Venezuela's conflict shows that those fleeing have a legitimate claim to apply for international protection. Having incorporated the expanded refugee definition within its national legislation, Peru has a formal responsibility towards facilitating this process. In practice, the PTP can contribute to Peru potentially circumventing this responsibility as Venezuelan migrants are likely to be assessed on a *prima facie* basis, leaving them misinformed about other protection schemes available under Peruvian law.

While Peru receives praise for hosting Venezuelans, it must be understood that the PTP is not a protection instrument guaranteeing a breadth of rights. On paper, it is simply a residence permit allowing Venezuelans to work and study for a period of one year and, although this may be suitable for some applicants, it is not appropriate for those who have fled their country because their lives, safety and freedom are threatened. Peru's PTP should therefore not be viewed as the new standard for protecting those fleeing crisis, conflict and violence within Latin America as this would risk propagating a discourse and practice based on generosity and goodwill rather than one based on rights.

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Protection in the absence of legislation in Trinidad and Tobago

Rochelle Nakhid and Andrew Welch

The Caribbean's many small island States are grappling with increasingly complex mixed migration flows, yet few have introduced refugee legislation. Trinidad and Tobago is in the process of doing so.

The island state of Trinidad and Tobago has seen increasing numbers of migrants in the past decade and is both a transit and destination point. Consistent with Caribbean trends, refugees of various nationalities are increasingly making it to Trinidad and Tobago's shores. 184 persons were registered as asylum seekers in Trinidad and Tobago in 2014, 209 in 2015 and 314 in 2016.¹ According to UNHCR, the UN Refugee Agency, the first few months of 2017 showed a doubling of 2016's figures, with 640 registered asylum seekers, refugees and other persons of concern as of May 2017. This rapid increase is expected to continue as there remains a backlog of persons to be registered; the total for 2017 is projected to be about 1,800.

Asylum seekers and refugees in Trinidad and Tobago come from six main countries – Cuba, Venezuela, Syria, Bangladesh, Jamaica, Colombia and Nigeria – representing a mix of both regional and extra-regional refugees. Previously, the majority hailed from Cuba and Syria but as of 2017 Venezuelans became the second largest group of asylum seekers. However, refugees and asylum seekers also represent many other countries of origin such as Pakistan, Congo, Mali, Sudan and Uganda. More widely, according to UNHCR statistics dated March 2017, the number of refugees and asylum seekers in the Caribbean region² rose by 50% between 2015 and 2016. The top ten countries of origin in descending order are El Salvador, Haiti, Honduras, Guatemala, Cuba, Venezuela, Colombia, Syria, Jamaica and Bangladesh.

Protection challenges and shortcomings

In the Independent Commonwealth Caribbean,³ only Belize has legislation for refugees, while Jamaica and Trinidad

and Tobago have a refugee policy but no legislation. Trinidad and Tobago acceded to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol in November 2000. To date, these have not been incorporated into domestic legislation but the drafting process to do so is now underway. This process is being undertaken in a commendably participatory way with the main stakeholders including the International Affairs Unit and the Immigration Division of the Ministry of National Security, UNHCR and the NGO Living Water Community (LWC).⁴

The good relationship among stakeholders has resulted in the protection of hundreds of refugees over the past three decades. A refugee policy, approved in June 2014,⁵ outlines rights that refugees are entitled to: a permit authorising their stay in the country, the right to work, identity papers, travel documents, public assistance (if unable to work and in need), medical care, freedom of movement, family reunification, educational opportunities and recreational activities, counselling for trauma or other psychological issues, and the right not to be expelled from the country (unless the refugee poses a threat to national security or to public order). It envisages a three-phased approach to enabling the government to assume responsibility for refugee protection and take over refugee status determination. Despite an overly ambitious timeline, capacity building of government actors has been taking place to enable them to assume this responsibility.

However, not all of the rights listed in the policy are actually accorded to the refugees. Other than freedom of movement, medical care and the right not to be expelled, in practice there is no right to work, no

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issuance of identity documents on handing over of passports to receive an order of supervision, no public assistance nor access to culturally sensitive psychological treatment, limited access to education for children, and no easy route to family reunification.

Any refugee or asylum seeker who wishes to claim protection in Trinidad and Tobago is bound by the Immigration Act and its regulations, and this makes it difficult to implement effective protection safeguards. Persons who enter or remain in Trinidad and Tobago without correct documentation may be treated as criminals (imprisoned and/or fined) and are likely to be detained in an administrative detention centre pending deportation to their countries of origin. The Act's rulings apply to asylum seekers and refugees as well, especially if they are in possession of false documents or are undocumented.

When asylum seekers register with UNHCR through LWC, and in line with procedures agreed in 2014, they are referred to the Immigration Division which grants them an order of supervision. This imposes a reporting requirement and protects the asylum seeker from *refoulement* or detention so long as they comply with the laws of the country. This alternative to detention was negotiated years ago with the Immigration Division along with the removal of the usual requirement of paying a bond. However, a recent case from the High Court of Trinidad and Tobago has indirectly called into question the legality of the current use of orders of supervision for asylum seekers and refugees. The stakeholders are due to meet to discuss the implications of this decision and to look at alternative solutions.

The refugee policy also recognises the three durable solutions promoted by UNHCR to help refugees rebuild their lives in dignity

and peace. In Trinidad and Tobago, however, as refugees cannot legally integrate into the country or work, UNHCR depends heavily on resettlement as the main possible solution for most refugees (traditionally in the United States). This can be lengthy and there is no guarantee that the refugees will be accepted by another country. With declining numbers of available resettlement spaces worldwide, local integration remains the *de facto* solution.

Additional protection concerns relate to LGBTI⁶ persons, children and women, in particular. Many LGBTI persons flee their home countries seeking refuge in Trinidad and Tobago. However, due to the country's cultural norms and Sexual Offences Act of 1986, they face many of the same protection concerns in Trinidad and Tobago that they had in their country of origin. Due to restrictions imposed by the Immigration Division, concerns over a lack of school places and a preference for enrolling refugees over asylum seekers, growing numbers of children remain out of school. There is little capacity for accommodating unaccompanied or separated children; this is due in part to a lack of bilingual personnel and in part to a shortage of spaces in children's homes.



In a classroom at the University of the West Indies in Trinidad, Professor of Linguistics Valerie Youseff assists an eight-year-old refugee from Colombia with English language exercises.

Meanwhile, with longstanding discrimination towards Latina women in Trinbagonian society, and entrenched misogyny, many refugee women face harassment daily and remain particularly vulnerable to exploitation and abuse. This vulnerability is exacerbated in the workplace where refugee women (and all refugees, for that matter) are forced to work in the informal economy.

Options in the face of limited resources and capacity

LWC is the only civil society organisation on the island that is dedicated to refugees. A recent partnership with the University of the West Indies, however, offers some hope for expansion of services through the provision of English language classes (and in the future perhaps offer courses on refugee studies). Another partnership envisions the provision of legal aid in collaboration with the local law school.

Arguably, like any other State, Trinidad and Tobago should ensure that basic legal obligations are met and access to asylum facilitated, despite not yet having domestic legislation in place. It should provide humanitarian assistance to those in need in a way that respects the dignity and security of all persons. While putting its

existing capacities and resources to use to effectively and efficiently guarantee the protection of refugees and all persons on its territory, its own limitations as a Small Island Developing State should be acknowledged, including its ongoing recession. Where Trinidad and Tobago falls short of being able to provide protection for the growing number of asylum seekers, the international community should consider how to provide appropriate, adequate support to ensure that those protection needs are met. The entire Caribbean could certainly benefit from additional international support.

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1. This does not include persons who spontaneously depart or refugees who are resettled to third countries.
2. This includes Belize.
3. This refers to English-speaking countries in the Caribbean which gained full independence from the United Kingdom.
4. LWC has partnered with UNHCR since 1989; UNHCR established a presence on the island in January 2016.
5. National Policy to Address Refugee and Asylum Matters in the Republic of Trinidad and Tobago, adopted by Cabinet in June 2014 www.refworld.org/docid/571109654.html
6. Lesbian, Gay, Bisexual, Transgender and Intersex

Eradicating statelessness in the Americas

Juan Ignacio Mondelli

Considerable progress has been made towards eradicating statelessness in Latin America and the Caribbean since 2014 but there is still work to be done if it is to become the first world region to eradicate statelessness.

With the adoption of the Brazil Declaration and Plan of Action in 2014,¹ 28 countries and three Latin American and Caribbean territories committed themselves to eradicate statelessness in the region following the guidelines of the UN Refugee Agency (UNHCR) Global Action Plan to End Statelessness.² To this end, countries agreed that no new cases of statelessness must originate in the region, all stateless persons must acquire or regain their nationality, and

people at risk of statelessness need to be enabled to surmount any legal or practical barriers to prove that they are nationals of a specific country. They also agreed that until stateless persons are able to obtain a nationality, they must be protected. Hence, while the Brazil Plan of Action recognises that the primary approach to ending statelessness is one of solutions, it proposes that States adopt measures in all three areas: prevention, protection and resolution.

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Progress in the region since 2014

Prevention: With regard to preventing statelessness, the Brazil Plan of Action proposes that States accede to the 1961 Convention on the Reduction of Statelessness,³ harmonise their domestic nationality regulations with international standards, and facilitate birth registration.

At present, out of the 35 Member States of the Organization of American States, only 16 are States Parties to the 1961 Convention. Three of these – Argentina, Belize and Peru – have become parties to the Convention since 2014, while Haiti has recently decided to accede to the Convention (and will become the 17th Member State). Meanwhile, Colombia and Chile have introduced reforms to limit the scope of constitutional exceptions to the principle of *jus solis*,⁴ thus reducing the possibility of cases of statelessness occurring on their territories, and Panama has changed its registration policy to facilitate registration of births of children born in Costa Rica to Panamanian parents.

Protection: To protect stateless persons, the Brazil Plan of Action asks States to accede to the 1954 Convention relating to the Status of Stateless Persons, adopt domestic protection frameworks, and establish procedures for determining statelessness. To date, 19 of the 35 member countries of the OAS are States Parties to the 1954 Convention. Of these, after 2014, El Salvador acceded to the Convention, and Mexico removed its reservation to Article 31 on the expulsion of stateless persons. Also, the parliament in Haiti approved accession, and President Bachelet in Chile promised to move towards accession to both statelessness conventions. Regarding the procedures for determining statelessness, the Inter-American Court issued an advisory opinion stating that, in a migration context, States must determine the nationality status or statelessness of any child on their territory; to this end, they should establish or strengthen appropriate procedures, recognising the varying needs of children and adolescents.

In 2016, Costa Rica adopted regulations that allow for the comprehensive protection

of stateless persons. Elsewhere, Ecuador's Organic Law of Human Mobility and Brazil's migration law – both adopted in 2017 – regulate the rights of stateless persons and require statelessness determination procedures to be established. In addition, Argentina, El Salvador, Panama, Paraguay and Uruguay are currently drawing up regulations to address the issue, while Colombia, Guatemala and Peru have all expressed interest in doing so.

Resolution: In relation to confirmation of nationality, Chile (through its 'Chile reconoce' project⁵), Costa Rica and Panama (through the Chiriticof project⁶) have implemented projects to verify or review people's birth registration and ensure appropriate registration and access to documentation proving nationality. Moreover, Bolivia, Brazil and Ecuador have introduced regulations to facilitate the naturalisation of stateless persons, while Argentina, El Salvador and Paraguay are drafting similar laws.

Lessons learned

The Cartagena +30 process – that led to the Brazil Declaration and Plan of Action – allowed States to recognise that statelessness is a human rights issue not just in the world at large but also in the Americas, and that its eradication generally requires the investment of few resources. Cartagena+30 favoured States' assumption of ownership towards the goal of ending statelessness and promoted the identification of appropriate actions to achieve this goal.

Stateless persons can play a key role in sensitising state officials and raising awareness of the problem within society at large. Following the adoption of the Brazil Plan of Action, training courses and regional meetings organised by UNHCR had a greater impact when they included stateless persons – such as Maha Mamo, a stateless refugee in Brazil⁷ – who could explain the humanitarian impact of statelessness and why solutions such as naturalisation are needed. In addition, given that statelessness is a relatively new issue for many officials who had traditionally focused only on asylum and refugee



Maha Mamo, a refugee in Brazil, was born stateless in Lebanon and is still without a nationality at the age of 28. Read her story at www.unhcr.org/ibelong/maha-mamo/.

protection issues, the 'novelty' of statelessness proved to be a useful point of entry for talking about the subject and raising awareness.

Bi-national projects can bring about not only a reduction in statelessness but also a strengthening of cooperation between countries. The traditionally cordial relations between Costa Rica and Panama favoured the implementation of the joint Chiriticos project which sought to determine the nationality of migrants temporarily residing in border areas and of any of their descendants born in Costa Rica. In implementing the project, cooperation between the two States increased, through exchange of information, fieldwork and bilateral cooperation.

Improving access for stateless persons to naturalisation contributed to a similar improvement in access to this solution for non-stateless refugees. Article 32 of the 1954 Convention and Article 34 of the 1951 Convention establish the same standard of treatment for non-refugee stateless persons as for non-stateless refugees as regards naturalisation. States should endeavour to facilitate naturalisation in both cases. Although it has been easier for States to understand and empathise with the idea of facilitating naturalisation for stateless persons, countries such as Argentina and Paraguay are developing dedicated protection frameworks for stateless persons that also include facilities for naturalisation of non-stateless refugees, while Bolivia has already

passed a regulation to that end. In this sense, the goal of solving statelessness has had a spillover effect that may benefit refugees.

Remaining challenges

Three years after the adoption of the Brazil Plan of Action, significant progress has been made towards the eradication of statelessness. Likewise, important lessons have emerged that will be useful in the continuing implementation of the Brazil Plan of Action at the national level.

In terms of challenges, however, it should be noted that, despite Belize's accession to the 1961 Convention and the recent approval of accession to both statelessness conventions by Haiti, the number of Caribbean countries that are States Parties to the conventions remains low. Similarly, in the Americas, it is in the Caribbean that there are still nationality laws that discriminate on the basis of gender, where the largest number of people are at risk of statelessness, and where there are thousands of people who have been arbitrarily deprived of their nationality. In 2020 UNHCR will undertake another evaluation of the implementation of the Brazil Plan of Action. If the Americas is to become the first world region to eradicate statelessness – as UNHCR hopes⁸ – it will be necessary to redouble efforts in these Caribbean countries over the next three years.

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- www.refworld.org/docid/5487065b4.html
- UNHCR (2014) *Global Action Plan to End Statelessness: 2014-2024* <http://bit.ly/UNHCR-stateless2014-ActionPlan>
- www.refworld.org/docid/3ae6b39620.html
- 'Right of the soil', commonly referred to as birthright citizenship, meaning the right of anyone born in the territory of a state to nationality or citizenship of that state.
- 'Chile recognises' <http://chilereconoce.cl>
- <https://youtu.be/SwrQXGEwTBU>
- www.unhcr.org/ibelong/maha-mamo/
- António Guterres, former High Commissioner for Refugees, speaking at 'Out of the Shadows: Ending Statelessness in the Americas', November 2014 www.youtube.com/watch?v=VAf3MV8Hxfs

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Extra-regional refugee resettlement in South America: the Palestinian experience

Marcia Vera Espinoza

South American countries have been increasingly opening their doors to resettle extra-regional refugees. One of the most visible initiatives was the resettlement of Palestinian refugees in Chile and Brazil during 2007 and 2008.

The Humanitarian Resettlement Programme for extra-regional refugees built on the Solidarity Resettlement Programme that emerged from the 2004 Mexico Declaration and Plan of Action. The Solidarity Resettlement Programme was designed for refugees in need of protection within the region, and the later Humanitarian Resettlement Programme reflected a desire to extend the scope of this South-South cooperation and to enhance the role of the region in international refugee response and protection.

Chile and Brazil each received more than 100 Palestinian refugees, who had been living in protracted situations in refugee camps on the border between Iraq and Syria and in the Jordanian desert. Although the number was small in comparison with the intake of traditional resettlement countries, the programme raised great interest and significant funding, and triggered the establishment of a network of civil society organisations, local municipalities and private actors that supported the initiative. Research undertaken between 2012 and 2014 explored the refugees' experiences of integration in both countries.¹

Managing expectations

One of the main dimensions affecting the Palestinians' resettlement experience in both countries was the tension that developed between refugees and the organisations involved in resettlement, as a result of what they identified as 'unfulfilled expectations'.² Expectations were created by refugees and by the resettlement organisations alike. Common expectations among Palestinian refugees in both countries related to having their immediate needs covered, socio-

economic stability, the learning and use of a new language, better access to naturalisation, and opportunities for family reunification. Expectations were created from the moment they received resettlement information, whether they were in their first country of asylum or in their refugee camp at the time. In Brazil more than 70% of Palestinian refugees surveyed stated that the country did not meet their expectations, while in Chile over 50% of refugees had similar perceptions.

"They told me, 'Look, there in Brazil you are going to study Portuguese, you will find a house, you will have a job, everything.' And nothing [was accomplished]." (Mahfoud, Brazil)³

"Here it is different from what I thought it would be. I thought that in this country I would have a good situation and that I could live well... that you could work and have everything. But when we arrived, finding a job was difficult and we worked so much for very little money." (Rahal, Chile)

Nacira, a Palestinian refugee in Brazil, stressed that if the resettlement organisations had provided accurate information from the beginning the refugees could have made a more informed decision. The interview 'missions' (visits by officials from the country offering resettlement) and the information provided at the refugee camp or at the first country of asylum are clearly pivotal in this. In the case of Palestinians who came to Brazil, there was no mission and it was left to staff of UNHCR, the UN Refugee Agency, in Jordan to provide the information. In the case of Chile, a mission with government officials, UNHCR and the implementing NGO's representatives went to the Al-Tanf camp but they did not have translators who knew both the language and

the Chilean context, so accurate explanations and descriptions proved difficult.

Both countries have since improved their communication with refugees who are considering resettlement, by translating some key documents into different languages and by providing written information about the programme for use during the missions. In 2014, UNHCR and its implementing partners in Brazil published a booklet for refugees in Brazil.⁴ This includes sections in Portuguese, English, French, Spanish and Arabic, providing basic information about the rights and obligations of refugees, how to obtain or renew documentation, how to apply for permanent residence, where to find answers to specific questions and a list of useful contacts, including the contact details of all organisations involved in refugee reception. Chile had created a similar booklet with practical information about the country for Colombian refugees. Both countries also held group events with refugees in order to evaluate the programme.

Through interviews it became clear that those administering the resettlement programmes in both countries also developed a set of expectations based on the understanding of 'self-sufficiency' as refugees' capacity to reach economic stability and independence, whereas the refugees viewed self-sufficiency as a combination of economic autonomy and agency over their own resettlement process. When refugees complained or raised the issue of 'unfulfilled promises', some members of the organisations involved referred to them as 'ungrateful'⁵ and as having a 'refugee mentality' from years of having been assisted.

Belonging here and there

Another cross-cutting theme emerging from interviews with Palestinian refugees was that their sense of belonging was divided between two or more locations. For instance, participants emphasised how language was a key dimension affecting their integration experience. The acquisition of Spanish or Portuguese in the host country represented the first form of 'membership' sought by most of the resettled refugees.

At the same time, Palestinian refugees highlighted that use of their language of origin was important in order to preserve their identity and as an element of intimacy within the home or where communities got together. It was also important in maintaining relationships with family members and friends displaced elsewhere.

"It is very important to speak Arabic inside the house, so the children don't lose it. We talk to our children about the Qur'an and what it says. We also teach them about our language and they learn little by little." (Zoheir, Chile)

In the country of resettlement, learning the local language served different purposes. For some refugees, learning the language allowed them to make friends and build relationships, while for others language was necessary for finding jobs, accessing services and avoiding marginalisation. Refugees criticised how the language classes were delivered, the poor quality of the material and the lack of a methodology specific to the refugees' needs.

Naturalisation and access to rights

In both countries, refugees' experiences of integration were framed by the legal status that resettled refugees received upon arrival. According to most of them, the immediate regularisation of their status allowed them and their children to access health and education (primary and secondary) like any other citizen in Chile and Brazil. However, refugees also spoke of those rights which they could not access because of their temporary status or because their situation was not known to local service providers. Some of these restrictions included access to pensions, housing and higher education subsidies. Lack of access was particularly acute in Brazil. In Chile, refugee status granted to resettled individuals and their families guarantees permanent residence; in Brazil, however, refugees are granted a two-year temporary visa, which can then be renewed for another two years, before they are eligible to apply for permanent residence. Despite the initial difficulties, both countries have since made improvements in these areas. For instance, Chile has enabled

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all Palestinian refugees to obtain housing subsidies without requiring five years of permanent residence. In Brazil, meanwhile, a recent decision of the Federal Supreme Court states that foreigners are eligible to receive the state pension even without naturalisation.

The question of naturalisation – as a form of identity and to allow mobility – affects Palestinian refugees in particular. According to Palestinian refugees in both countries, naturalisation was one of the promises made when they received the offer of resettlement.

“For me it is a dream to have a nationality, because now I am 50 years old and I have been a refugee all my life. I don’t have a recognised nationality, no passport. It is very difficult.” (Hafid, Chile)

In Chile, Palestinian refugees – with the support of some politicians and civil society – demanded that the government support their request for naturalisation. By June 2015, 65 adult Palestinians had obtained Chilean passports, and by a year later 45 children and adolescents had received naturalisation. Children born in Chile are automatically recognised as nationals. Brazil, meanwhile, has been less supportive of providing naturalisation, with only one family in the process of obtaining naturalisation when interviewed back in 2014. Until recently, refugees could apply for naturalisation after four years of permanent residency in Brazil (that is, after a total of eight years, when temporary residence is taken into account).

Conclusion

There are clearly recommendations to draw from the above: better information provided in their own language of origin for refugees considering resettlement, improved language teaching provision in the countries offering resettlement, and a greater appreciation of the importance of legal rights such as access to naturalisation. Exploring refugees’ experiences enables the limitations of the programme – and the refugees’ desire for greater agency – to be better understood and recognised, in order to enable further policy development.

South America – and indeed the whole of the Latin America and Caribbean region

– is committed to demonstrating solidarity with international humanitarian crises through the implementation of resettlement, as stated in the Brazil Declaration and Plan of Action.⁶ The understanding of the experiences of extra-regional resettlement is key to success in this endeavour. While Chile is getting ready to receive 60 Syrian refugees from Lebanon at the end of 2017, Brazil is discussing how to move forward with their own resettlement programme to support unaccompanied children affected by the Syrian conflict. This programme will complement the humanitarian visas that Brazil has been granting to Syrian refugees since 2013. Argentina has also implemented humanitarian visas for Syrian refugees since 2014 and is now developing a private sponsorship resettlement programme. Uruguay was the first country to resettle Syrian refugees, facing several challenges during its implementation.⁷ The extra-regional efforts of the sub-region are now mainly focused on supporting Syrian refugees. Learning from previous resettlement experiences, like the one of Palestinian refugees in Chile and Brazil, could contribute to the better planning and implementation of resettlement.

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1. This comprised 80 interviews (including with refugees, government officers, UNHCR and implementing agencies), 86 surveys and participant observation. The research, that included Palestinian and Colombian refugees, was supported by CONICYT and fieldwork grants from RGS-IBG Slawson Award, SLAS and SIID.

2. See also: Vera Espinoza M (forthcoming 2018) ‘The Politics of Resettlement: Expectations and unfulfilled promises in Chile and Brazil’ in Garnier A, Lyra Jubiltut L and Bergtora Sandvik K (Eds) *Refugee Resettlement: Power, Politics and Humanitarian Governance*. New York: Berghahn Books.

3. The names of all refugees interviewed have been changed.

4. UNHCR (2014) *Booklet for Asylum Seekers in Brazil*
<http://bit.ly/ACNUR-Cartilha-Brasil>

5. See Moulin C (2012) ‘Ungrateful subjects? Refugee protest and the logic of gratitude’ in Nyers P and Rygiel K (Eds) *Citizenship, Migrant Activism and the Politics of Movement*, pp54-72.

6. www.acnur.org/t3/fileadmin/Documentos/BDL/2014/9865.pdf

7. See article in this issue by Raquel Rodriguez Camejo.

Venezuelan displacement: a challenge to Brazil

Helisane Mahlke and Lilian Yamamoto

Brazil must strengthen its reception and integration of fleeing Venezuelans

Venezuela's political, social and economic crisis, accompanied by increasing crime rates, has triggered widespread movement of Venezuelans to the state of Roraima in northern Brazil and elsewhere. Despite Venezuelan citizens being entitled (under a recent Resolution made for associate MERCOSUR members) to temporary residence in Brazil of up to two years, most do not know about this possibility or have been deterred by the financial cost associated with it. They apply instead for asylum, whether they are eligible for it or not, since after making the application they are permitted to access public services and to receive a work permit.

Between January and June 2017, the state of Roraima received a total of 5,787 asylum claims (including Venezuelans), 3,500 more than it received in the whole of 2016, and Roraima authorities report more than 30,000 people crossed the border in the following three months. As the crisis deepens, the number of people fleeing Venezuela will only increase.

Brazil's new Migration Law (Law No 13445) of 2017 takes a rights-based approach, and there is hope that it will provide better legal migration channels for those who do not have the grounds to seek asylum in Brazil, thus easing pressure on the country's asylum system. However, the country tends to react to, rather than anticipate, waves of migration and lacks a migration policy to respond adequately to those migrants and refugees who have already arrived. The Brazilian government was slow to enact the normative resolutions that were needed to provide humanitarian visas to Haitians following the 2010 earthquake (Resolution No 97, 2012), and has been similarly slow in providing temporary residence for Venezuelans (under Resolution No 126, 2017), the latter resolution only being issued after pressure from civil society and public bodies. Although the

federal government has provided funds to the states of Roraima and Amazonas to provide social support and health care to Venezuelans, these measures are far from sufficient and, as these areas were already suffering from shortcomings in Brazil's provision of public services, both migrant and host populations are insufficiently supported.

As a State Party to the 1951 Refugee Convention and its 1967 Protocol, Brazil is required to provide an effective structure for refugees' reception and integration – but this is still absent. Brazil's lack of an effective migration policy and structure is a political choice; the government opts instead to adopt provisory solutions on a case-by-case basis. This is contrary to the law and spirit of the 1951 Convention, and Brazil must strengthen reception and integration for both Venezuelan migrants and refugees. A more proactive long-term approach will enable faster and more effective protection of forced migrants, particularly important at a time when displacement from Venezuela shows no sign of abating.

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Members of the Warao indigenous community who have fled Venezuela sleep in hammocks outside a shelter in Boa Vista, Roraima, Brazil.

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The future of the Brazilian resettlement programme

Thais Silva Menezes and Stylianos Kostas

Brazil's resettlement programmes have been praised for demonstrating the country's commitment to refugee protection but the number resettled remains small compared with international need. Brazil needs to address the financing of such programmes if it is to ensure their sustainability and growth.

In 2004, Brazil marked the occasion of the 20th anniversary of the Cartagena Declaration by proposing a regional resettlement programme. The Cartagena Declaration of 1984 had encouraged the countries of Latin America and the Caribbean to make greater provision for the protection of refugees; the Mexico Declaration and Plan of Action of 2004 built on existing regional cooperation by initiating a Solidarity Resettlement Programme which would focus on resettlement of refugees from the region, particularly Colombia and the Northern Triangle of Central America¹. The Declaration also widened the scope for all countries in Latin America to be involved and for more refugees to be included in the future.²

Brazil has resettled more refugees than any country in the region and its resettlement programme has not been suspended or delayed for political and/or financial reasons, as has happened in Argentina, Chile and Paraguay. From 2002 (when the resettlement programme was first implemented) to July 2017, Brazil resettled 715 refugees. Brazil's resettlement programme has been praised for demonstrating the country's commitment to the international protection of refugees

– but why has the Brazilian programme been unable to resettle even larger numbers of refugees? One answer may lie in the way in which the task of financing was assigned to just one of the programme's stakeholders: UNHCR, the UN Refugee Agency.

The greatest asset of the Brazilian Resettlement Programme is its tripartite structure. The framework comprises the National Committee for Refugees (CONARE), an executive inter-ministerial committee which provides the legal and bureaucratic support that refugees need when they arrive; UNHCR, which is able to identify people at risk in their first country of asylum and to advocate their resettlement in countries where protection and local integration are possible; and civil society institutions, which have a long history of supporting refugees in Brazil, which enables them to anticipate the needs of newcomers, prepare for their reception and monitor their integration. UNHCR is responsible for implementing the programme and also for financing it. This structure is common among resettlement programmes in the Latin American region. While on the one hand UNHCR has an ability to raise funds from the international community that most countries do not have, on the other hand a number of countries to which UNHCR allocates funds might, collectively, raise more funds than UNHCR could on its own, thus facilitating the resettlement of an overall greater number of refugees. As UNHCR is in most cases the only funder of the cost of refugees' selection and transportation to Brazil, the agency is crucial not only to the successful implementation of the resettlement programme but also to its existence and continuity. This issue of exclusive financing by UNHCR has raised significant concerns about the future of the programme since there are no guarantees that UNHCR will be able to sustain this funding.

How then will Brazil be able to maintain and develop a programme that is totally dependent on external resources? Competing demands on UNHCR's limited



resources – including acute refugee crises in other regions, such as in the Middle East – might mean that hard choices have to be made about priorities, perhaps risking the loss of all the expertise built around this protection tool in Brazil.

Twenty years after the first agreement on the resettlement of refugees in the region was signed, it may be time for Brazil to strengthen support for its own national resettlement programme. It is true that Brazil has developed other protection tools, such as the humanitarian visa for individuals affected by the Syrian conflict (which also extends to Palestinian refugees who have been living in Syria).³ However, in order to contribute more assertively to the international protection of refugees, the Brazilian government needs to take a leading role in its national resettlement programme while at the same time working closely with UNHCR and civil society. To achieve this Brazil needs to provide the primary funding for its resettlement programmes, in accordance with national commitments and needs. The tripartite structure of the Brazilian Resettlement Programme is its greatest

asset but a move away from its exclusive financing by UNHCR could help to reinforce the programme and provide protection to a greater number of refugees. It could also lead to new possibilities for the design of a national resettlement programme that is not only sustainable and effective but which also reflects to an even greater degree Brazil's commitment to international solidarity and shared responsibility for protecting refugees.

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1. Also now referred to as Northern Central America.

2. See also Barreto L P T F and Leão R Z R (2010) 'Brazil and the spirit of Cartagena', *Forced Migration Review* issue 35 <http://bit.ly/Barreto-Leao-Cartagena-2010>

3. Once individuals declare that they want to apply for asylum in Brazil they are issued with a tourist visa but are exempted from the usual requirement to submit bank accounts, letters of invitation, proof of employment and/or economic activity and return tickets. See also article by Gilberto M A Rodrigues, José Blanes Sala and Débora C de Siqueira in this issue.

Visas and qualifications: Syrian refugees in Brazil

Gilberto M A Rodrigues, José Blanes Sala and Débora Corrêa de Siqueira

Brazil's humanitarian visa programme for Syrian refugees and its efforts to recognise their qualifications could offer lessons for refugee protection and integration across the region.

Syrians fleeing conflict in their country began arriving in Brazil in 2010 but it was only from 2012 onwards that Syrian asylum applications increased in the country. This increase led Brazil's National Committee for Refugees (CONARE) to approve Resolution 17/2013,¹ which established a special humanitarian visa to be granted to Syrians affected by the conflict. The resolution allowed Brazilian diplomatic missions to issue humanitarian visas to Syrians before their entry into Brazil,² and afterwards permitted these applicants to apply for asylum via a 'fast-track' procedure. In 2015, CONARE renewed the resolution for a further two years and

also signed a cooperation agreement with UNHCR, the UN Refugee Agency, to allow it to support and facilitate identification and visa procedures carried out by Brazilian embassies in countries neighbouring Syria.³ In September 2017 this resolution was renewed again, for two further years. Another important initiative was CONARE's agreement in February 2017 to resettle up to 20 unaccompanied Syrian children, a measure also approved by UNHCR.

There are now more than 2,000 Syrians refugees living in Brazil and in 2016 Syrians were the single largest national group to be granted asylum by CONARE.⁴ This

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measure of granting humanitarian visas has now been incorporated into Brazil's new migration law of 2017 (Law 13,445), and it is hoped that the availability of this type of visa will be incorporated into other Latin American countries' refugee policies as well.⁵

Although Syrian refugees can access the Bolsa-Família Program, Brazil's federal income transfer programme, preliminary research conducted with Syrian refugees in São Paulo suggests that the principal – sometimes only – help they receive is with documentation, and that they are in need of wider assistance with work, language, housing and the recognition of qualifications.⁶ Most adult Syrian refugees who have recently arrived in Brazil have had a tertiary-level education, thanks to Syria's formerly strong education system. Although some Syrians are working successfully as entrepreneurs in small businesses, mainly in the food sector, one of the challenges they face is recognition of their qualifications and the ability to exercise their professions. For refugees with unrecognised qualifications, the solution is, in many cases, to take jobs that require fewer skills and are lower paid than those they are qualified to do.

Brazil's 1997 Refugee Act states that universities and other educational institutions should facilitate the recognition of refugees' qualifications, and some universities – such as those involved with the UNHCR initiative Sérgio Vieira de Mello Academic Chair – try to implement this policy. Even in these institutions, however, there can be opposition. This occurs partly because Brazilian universities are unused to foreign students, and partly due to an elitist mind-set whereby only those qualifications obtained from elite universities are recognised.

While progress is slow, the qualifications of Syrians and other refugees are starting to be recognised, although it remains difficult to obtain authorisation to exercise professions, particularly in fields such as law and medicine. Universities and NGOs have made efforts to support Syrian refugees in their access to appropriate opportunities, including offering free Portuguese courses as insufficient grasp of the language is a considerable obstacle to obtaining better

jobs. The Brazilian government has taken steps towards providing validation of tertiary qualifications obtained outside Brazil, and accepting partial documentation and/or results from exams conducted by Brazilian universities to certify level of knowledge as proof of studies.

Brazil's initiative in welcoming Syrian refugees is partly related to its historical and cultural links with Syria and Lebanon and partly to the humanitarian role that Brazil has played in Latin America since the passing of its 1997 Refugee Act. The country's introduction of humanitarian visas and its work on validating refugees' qualifications have overall been positive developments; it remains to be seen, however, how the country will continue to develop its policies as more refugees arrive, and how its actions might advance policy for refugees elsewhere in the region.

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Syrian refugees in Uruguay: an uncomfortable topic

Raquel Rodríguez Camejo

Only a year after Uruguay's resettlement plan for Syrian refugees was established, the resettled families said they wanted to leave. Expectations have not been met.

Uruguay was the first Latin American country since the start of the Syrian war to resettle Syrian refugees from Lebanon. However, what was designed in 2014 as a gesture of solidarity by a sympathetic, pioneering country has become an uncomfortable issue for the current government and the institutions that were involved.

In 2006, Uruguay established a Refugees Act and in 2007 joined the regional Solidarity Resettlement Programme (PRS), in light of the more than 400 refugees and asylum seekers it was then hosting from different countries in Latin America, Africa, Asia and Europe. In 2014 the government told UNHCR, the UN Refugee Agency, that it would be willing to resettle up to 120 Syrian refugees from Lebanon in response to the Syrian refugee crisis. The duration of the programme – known as the Syrian Refugee Resettlement Programme (Programa de Reasentamiento de Personas Sirias Refugiadas, PRPSR) – was set at two years (2014-16), with a budget of about US\$2.5 million. The pre-selection of refugee families on Lebanese territory was supported by UNHCR, following the Uruguayan government's stated preference for families with a rural profile, with at least one adult in each family able to work and with at least 60% of each family to be minors. After being interviewed by a Uruguayan delegation in Beirut, five families were selected, with a total of 42 members, of whom 33 were minors.

Although it is not the first time Uruguay has offered refugee resettlement, it was the first time with such a large group and with characteristics so different from the refugees of the Latin American region. Because of this, it was considered particularly important to inform the families – before they were definitely selected – of the socio-economic reality of the country and key aspects such as the compulsory, secular education system. The Department of Social Anthropology of the University of

the Republic (UDELAR) collaborated with PRPSR in preparing information material and provided support in the selection process and, with the Arab Language faculty, provided language training for those involved in implementing the resettlement programme.

From the time of their arrival in Uruguay in October 2014, Syrian refugees received accommodation, translation services, access to the health system, inclusion in the education system (with the support of translators), job training and introduction to Uruguayan culture and customs. For the two years of the programme, they were assigned a home and a monthly income (depending on the number of children). The government provided identity and travel documents in accordance with the 1951 Refugee Convention. The Syrian refugees resettled in Uruguay have permanent residence as well as legal and physical protection and the same civil, economic, social and cultural rights that all Uruguayan citizens hold.

Missed expectations

By September 2015, the five resettled families were reporting difficulties in finding work, insecurity (street thefts), the high cost of living in the country, and economic problems (despite the monetary subsidy received through the programme). They held public protests, saying they would not abandon the protest until the government found a solution to their claims.

*"We are going to die here or in Syria. Here we die because we do not have money and in Syria we die because of the war."*¹

The PRPSR's representative, Javier Miranda, stated: "We believe that with this resettlement plan they can lead a dignified life. The State supports them for two years but cannot do more. Uruguay is an expensive country, it is true. And the job offers that they access are the same as those accessed by most Uruguayans."

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Testimonies of the five resettled families reflect their concern and despair: “We escape from death, from war, and we reach poverty.” Another of the complaints referenced “deception” on the part of the Uruguayan authorities in the information provided in Lebanon. “They promised us an easy life but everything is expensive ... living poor is worse than war.” They see the only way out is to return to Lebanon or “to any country in Europe” where they consider they will have a better quality of life. One of the families tried to travel to Europe but was detained at the airport in Turkey and deported to Uruguay.

Even taking into account the difficulties of integrating into a new and very different country, with a different language and culture, adaptation would usually be considered as only a matter of time. The Syrian refugees came from a country at war, so the difficulties they might encounter in the host country would surely be insignificant – it was argued – in a context of being able to live in peace. But what does peace really mean? Is it possible to have peace in an environment where one cannot earn enough to lead a decent life?

“What is in Uruguay is peace. Peace is what everyone wants but if there is peace and yet you do not have something to live for, it is not peace. ... There is no tranquility. You are always thinking, thinking about the future, and this is very difficult, more difficult than war.” (Ibrahim Alshebli, a Syrian refugee resettled in Uruguay)

Most of the families had very different living conditions before the war in Syria. They had their own business, sufficient income and a low cost of living – in a country where it was possible to support a large family on only one salary. In Uruguay the reality is different. A high cost of living, low wages and difficulties in getting work – the reasons given by the refugees for wishing to leave – are experienced by local people on a daily basis, who both agree with, and resent, the refugees’ claims. In a statement, the government emphasised that: “whether you agree or disagree with the resettlement plan, the families’ anguish is still legitimate and this situation must not promote discrimination [...]”.

How to measure success or failure?

The PRPSR was planned in two stages – five families at first, and then seven more families – but the second stage was not implemented. Government sources cited the difficulties that the refugees had in adapting, getting work and attaining economic self-sufficiency; they also mentioned difficulties experienced by the PRPSR in managing this pilot project and the need to evaluate the results of the programme before resettling more families.

Former President José Mujica, who had publicly backed the PRPSR, pointed out the benefits that would have come from receiving peasant families with many children (which would have helped resolve problems of an aging population and shortage of rural labour). His own words, that “I asked for peasants and they brought me middle-class, relatively comfortable refugees”, reflect the government’s discontent with the choice of families and the political expediency at play in selecting those of a certain demographic profile.²

Hiram Ruiz points out that ‘success’ or ‘failure’ of resettlement programmes must be considered from many angles: the country that offers it, those who execute it and those who, as beneficiaries, receive it.³ The Uruguayan programme was established with the intention of supporting those affected by the Syrian humanitarian crisis. Even though some of the families wanted to leave, the programme should not be considered a failure, as it has provided free education and considerable support for the families’ integration. However, the lack of employment opportunities and the limited economic resources available to the Syrian refugees reflect some of the PRSP’s weaknesses, which should be taken into account for any future resettlement programmes.

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Measuring local integration in Ecuador

Santiago Cordova and Peter Janssen

In 2014-15 UNHCR Ecuador developed an index to measure the degree to which refugees are integrated in their host country, using three main dimensions of local integration: legal, economic and socio-cultural.

Ecuador has the largest recognised refugee population in Latin America. Of the more than 230,000 refugees and asylum seekers in the country, 60,500 are registered refugees, 90% of whom are from Colombia.¹ Refugees and asylum seekers have freedom of movement within the country and access to basic rights and services, according to Ecuadorian law. Several studies have shown that most Colombian refugees and asylum seekers in Ecuador seek to become locally integrated due to sharing a culture and language with the host country. However, they face obstacles such as discrimination, lack of recognition of documentation, and poor socio-economic conditions – all factors that stand in the way of full integration.

In 2013, in line with the Ecuadorian government's National Plan for Good Living, UNHCR Ecuador developed a Comprehensive Solutions Initiative (CSI), complemented in 2016 by a multi-year, multi-partner solutions strategy (2016-18). The multi-year strategy is implemented in coordination with public institutions, civil society and the private sector, and has distinct legal, social and economic dimensions. In order to assess the impact of the CSI and the multi-year strategy on local integration, UNHCR Ecuador designed a Local Integration Index (LII), which would also serve as a tool to best identify and assist the most vulnerable refugees and asylum seekers.

Defining integration

UNHCR Ecuador commissioned an extensive study of statistical information on the socio-cultural, economic and legal situation of Colombian refugees and asylum seekers. The survey consisted of 130 questions on specific issues such as migratory status, documentation, work, education, health care and economic conditions. The resulting

baseline data show that enjoyment of rights and access to services are, in general, available to refugees and asylum seekers in Ecuador, while economic factors still present challenges. While success of local integration depends to a large extent on objective criteria (such as legal status, freedom of movement, adequate employment and access to basic services), there is also a subjective element, namely the perception of individuals. The LII seeks to combine the objective and subjective elements and thus calculate the level of local integration across legal, economic and socio-cultural dimensions.

Each respondent was read a definition of local integration that incorporated elements of various definitions of local integration:

Local integration means forming part of a society where you have access to education, health, housing and employment, among others, and where you are able to maintain good relations with the people around you, in your neighbourhood and civil society organisations.

In order to determine people's subjective perception of integration, respondents were asked whether they felt integrated or not. The responses were used to determine the extent to which the different variables (such as legal status, access to education, health and income level) influenced an individual's perception of being integrated. Depending on the degree of its influence on the perception of local integration, each variable was given a certain weight.

The weighting of the variables is an essential element of the LII and relates to the specific context of the operation in question. For example,



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in some countries persons of concern may attach more importance (weight) to legal status, while in others priority is given to employment. We found that the socio-cultural integration of Colombian refugees and asylum seekers in Ecuador was greater than their economic integration, which was in turn greater than their legal integration. One significant finding of the survey in Ecuador was a correlation between a lack of legal status and being below the poverty line. When these weights were applied to the baseline data the result was an LII of 61.1% for Colombian refugees and asylum seekers in Ecuador, the average level of legal integration being 50.6%, socio-cultural integration 62.3%, and economic integration 59.5%.²

The versatility of the LII allows for analysis at group and individual levels, which in turn enables more precise interventions, targeting persons at the lower end of the

integration index. This, for example, can be through their inclusion in the Graduation Model,³ which the Office in Ecuador has been implementing since 2016 with promising results, where participants are selected are selected based on, among other things, their household's score on the LII. The Graduation Model (or approach) comes from the world of development assistance and is aimed at 'graduating' people out of poverty. The model consists of a sequenced set of interventions that include consumption support, skills training, mentoring, financial training and inclusion in safety networks within the community. Ecuador is one of few countries applying the model in a refugee situation. Families 'graduate' according to their performance against four criteria, which in Ecuador are: eating at least three nutritious meals a day; having a family income above the poverty line; having 5% of



Colombian refugees and Ecuadorians nationals in Santo Domingo participating in an integration activity as part of a 'Living Together in Solidarity' campaign.

income in savings in a bank; and belonging to a community or social network such as a church organisation. Of the 1,810 families currently supported by UNHCR Ecuador, 59% have achieved all four graduation criteria. In addition to use as a selection tool, the LII can also be used to measure the progress of those families participating in the Graduation Model towards local integration.

Conclusions

In Ecuador, the LII shows that, based on data collected in 2014, Colombian refugees and asylum seekers achieved relatively high levels of integration.⁴ At the same time, there is progress to be made for a significant proportion of the population. A mid-line study is currently under way, which will use the LII to measure the progress made by UNHCR's multi-year, multi-partner solutions strategy. Given its versatility, the LII is a tool to help design programmes

aimed at improving the integration of a given population, with respect to a certain type of integration or for a specific sector of the population. Regular calculations to update the LII will show how local integration evolves over time within a specific operation.

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1. Data from Ecuador's Ministry for Foreign Affairs and Human Mobility.
2. To go from the level of integration in each dimension to the global LII, it is necessary to apply the specific weights calculated for each dimension at an individual level and then calculate the average for the whole population. For details of the methodology and full results contact Santiago Cordova.
3. <https://trickleup.org/graduation-approach/>
4. 'Relatively' refers to the scale of the LII, with 0% representing no integration, such as a closed refugee camp with 100% dependency on humanitarian assistance in all sectors; and 100% representing full integration, such as naturalization.

The RCM Guide: a novel protection tool for cross-border disaster-induced displacement in the Americas

Walter Kälin and David Cantor

States in the Americas confront complex challenges in the face of human mobility caused by both sudden- and slow-onset disasters. A new regional guide presents practices and measures to help address the protection needs of cross-border disaster-displaced persons.

In November 2016, in Honduras, the Regional Conference on Migration (RCM)¹ adopted the *Guide to Effective Practices for RCM Member Countries: protection for persons moving across borders in the context of disasters*.² Designed to apply primarily to displacement deriving from sudden-onset disaster events, the RCM Guide has its roots in a 2013 Central America Regional Consultation by the Nansen Initiative, a global State-led process that culminated in the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (Protection Agenda) which was endorsed by 109 government delegations in October 2015.³ To support States in using the Protection Agenda – a toolbox of practices collected from

across the world – the Platform on Disaster Displacement was launched as a follow-up in May 2016. The RCM Guide builds on the Protection Agenda; however, the practices and measures that it showcases are more specific to the Americas and reflect the collected experiences of States in this region.

The Guide provides direction to RCM Member Countries on how existing law, policy and practice in the Americas can be used to address the needs of persons displaced across borders in the context of disasters. This would include those displaced by the recent hurricanes in the Caribbean. Examples of relevant measures include the flexible application of existing migration categories, the granting of temporary

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admission and stay through the issuance of humanitarian visas, and the temporary suspension of return to disaster-affected countries. Its usefulness stems from the fact that it strengthens and amplifies existing immigration law and policy practices⁴ but at the same time is non-binding and does not create new obligations, extend existing State obligations or require that new laws be passed.

Since its adoption, the RCM Guide has already proven valuable when developing operational tools for preparedness and response to disaster displacement. In March 2017, authorities from Costa Rica and Panama held a workshop on disaster displacement to prepare a joint response to situations where people have to flee across their shared border as a disaster hits. In this process, the RCM Guide provided an important reference point, providing advice and orientation to authorities working on the ground on both sides of the border, including immigration officers, disaster risk management agencies, consular officials and Red Cross responders. The outcome of the workshop was a set of draft Standard Operating Procedures on how the two countries can concretely collaborate to assist and protect persons displaced by disasters. These procedures were tested and validated in a bi-national simulation exercise in August 2017 in the Coto Brus district of Costa Rica's Puntarenas Province which borders Panama.

The RCM Guide has also informed and supported response. For instance, Costa Rican authorities drew on the preparatory work for the Guide to ensure a better informed and prepared response to displacement resulting from Hurricane Otto in November 2016. To increase awareness and use of the RCM Guide, RCM Vice-Ministers agreed on a training programme for government officials and other RCM stakeholders from international organisations and civil society. This training, which started in August 2017, aims to strengthen institutional capacity and cross-border cooperation on how to apply measures addressing disaster displacement, based on the RCM Guide, the Protection

Agenda and the Migrants in Countries in Crisis Guidelines.⁵

Less than a year after the Guide's adoption, the South American Conference of Migration (SACM)⁶ announced its intention to work on developing a similar guide, thereby demonstrating the importance of the RCM Guide far beyond the RCM sub-region.

Future steps: slow-onset disasters and climate change

Looking to the future, there is a variety of ways in which the protection and migration-related measures that the Guide describes can be further implemented and developed by RCM Member Countries or other States in the Americas. For instance, its approach to disaster displacement could be specifically developed by building on the framework of reciprocity and legal obligations in the well-established parallel field of disaster response law. Yet this is not the only area in which the RCM Guide might prove an inspiration in the future.

Alongside sudden-onset disasters, the Americas as a region is equally affected by slow-onset disaster events associated, for instance, with the adverse effects of climate change. The latter can have an impact on the risk of displacement in two ways: firstly, by altering the frequency and severity of certain hazards (such as drought, flooding and heatwaves) and, secondly, by increasing the vulnerability of persons and communities. Hazards linked to climate change will continue to have an impact on human mobility in the Americas, even if it remains unclear exactly how many people will be affected.⁷

This lack of data means that the displacement impact of slow-onset events and the protection needs of those who move in response are less evident than for dramatic sudden-onset events. There is a lack of systematic collection and monitoring of data on disaster displacement in general, and even more markedly so in cases of displacement linked to slow-onset events. Existing global estimates suggest around 25.4 million people are displaced in the context of sudden-onset disasters every year, and the



750,000 people in Haiti needed urgent humanitarian aid after Hurricane Matthew hit the country in October 2016.

number for Latin America and the Caribbean in 2016 is estimated to have been 1.8 million.⁸ However, these numbers do not account for people moving due to slowly developing processes that have affected them over a long period of time. These forms of human mobility are hard to identify definitively and the lack of standardised data collection tools and vocabulary does not help either.

Indeed, although the relationship between the adverse effects of climate change and different types of human mobility (migration, displacement and planned relocation) is increasingly recognised, it is complex in character. As a driver for mobility, the impact of slow-onset events such as land and forest degradation, loss of biodiversity and desertification is often compounded by, and difficult to disentangle from, other pre-existing vulnerabilities stemming from weak governance, population growth, poor urban planning or rural underdevelopment. Moreover, disaster displacement is often a result of the impact of both slow- and rapid-onset disasters. This can be observed in ongoing displacement from rural and coastal areas in Honduras, Haiti and Panama, where resilience to sudden-onset

hazards was already weak due to aridity, land degradation and coastal erosion.

Due in part to such complexity, there appears – even in the Americas – to be little State practice on the protection needs of persons displaced by slow-onset events, as compared with those displaced by sudden-onset events. At the same time, this is an issue that cuts across traditional policy areas, from humanitarian assistance, refugee protection, migration management and human rights to climate change action, disaster risk reduction and development. Addressing disaster displacement due to slow-onset events, especially in the context of the adverse effects of climate change, would thus require a whole-of-government approach, robust development solutions and the integration of climate change action, disaster risk reduction and the 2030 Agenda for Sustainable Development.

Overall, then, challenges remain in addressing human mobility in the context of disasters and climate change. Nonetheless, building on the approach and measures outlined in the RCM Guide for displacement due to sudden-onset events may offer a way forward for policy development on

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mobility due to slow-onset disasters in the context of climate change. For instance, States could build on existing bilateral and regional migration agreements in the Americas, adopting national quotas or seasonal worker programmes and providing training and education to potential migrants, as a means of promoting migration as adaptation to the adverse effects of climate change, environmental change and natural hazards. Further discussion on migration as adaptation could also take place at a regional level within the UN Framework Convention on Climate Change. Factoring in such forms of mobility to sub-regional freedom of movement frameworks such as in MERCOSUR (Mercado Común del Sur – Southern Common Market) or SICA (Sistema de la Integración Centroamericana – Central American Integration System) would also be a possibility.

One additional challenge in the Americas is that, across the region as a whole, the integration of different (sub-) regional frameworks and processes is not as comprehensive as in other regions, for example, the European Union. The work relevant to disaster displacement of the different regional entities, for example, MERCOSUR and the South American Conference on Migration or the North American Free Trade Agreement and the RCM is not integrated enough to amount to a strong regional migration regime.⁹ This creates barriers to the implementation and enhanced application of the different measures proposed in instruments such as the Protection Agenda and the RCM Guide. Ways to bridge the silos and to coordinate effectively within and across a multitude of parallel mechanisms and processes, at regional, sub-regional and domestic levels, are needed.

Conclusions

All things considered, the adoption and dissemination of the RCM Guide is a major step in strengthening the protection of people displaced across borders in the Americas in the context of disasters. Where challenges remain in securing a robust

response for persons on the move in relation to situations of disasters and in addressing the adverse effects of climate change in the region, the RCM Guide may also provide a template and platform from which to promote policy development. As a first step, better and more systematic data are needed in order to ensure that any such efforts at the regional or sub-regional levels are built upon a firm empirical understanding of human mobility in this context.

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Disaster-induced displacement in the Caribbean and the Pacific

Mo Hamza, Ida Koch and Malte Plewa

People in Small Island Developing States are particularly vulnerable to displacement by disaster. Governments in the Caribbean and the Pacific need urgently to do more risk management and planning, rather than focusing almost exclusively on response and relocation.

Relative to their population size, five of the 20 countries most affected by disaster displacement are Small Island Developing States (SIDS).¹ Today a person living in one of these States is three times more likely to be displaced by a disaster than a person living elsewhere.² However, little analysis has been done of displacement risk in SIDS, as the total number of people affected in a single case is often relatively small and therefore overshadowed by larger countries' more headline-grabbing events.

The SIDS in the Caribbean and the Pacific belong to the most hazard-prone regions of the world – as demonstrated only too vividly by recent hurricanes in the Caribbean. According to the International Monetary Fund, SIDS lose approximately 2% of their annual GDP on average as a result of natural hazards, four times the global average.³ Yet there is a lack of literature on disaster displacement with a focus on SIDS, and especially with a regional focus on the Caribbean. There are no appropriate data collection methods to register situations of protracted displacement or the effects of displacement on livelihoods over time. Labels and categories such as homeless, evacuee and displaced are often used interchangeably and merged in statistics on disaster displacement, regardless of duration and distance of movement, or the influence of the movement on livelihoods.⁴ Many cases of displacement, including some of a protracted nature, remain unnoticed.

Displacement drivers

Our research set out to identify how disaster-induced displacement is reflected in national and regional disaster risk reduction (DRR) and climate change adaptation (CCA) policy mechanisms in SIDS in the Caribbean and

the Pacific.⁵ The results of the interviews conducted for the research project show that, overall, the drivers of displacement are similar in both regions. The informal nature of settlement development and the lack of safe land for settlements, poverty, lack of insurance schemes and social safety nets, environmental degradation and the erosion of traditionally strong social bonds all interact with political factors in a complex manner to shape displacement risk. Several respondents mentioned how land tenure systems lead to disputes over proving ownership of land after a disaster. According to several respondents, this was one of the factors delaying reconstruction and prolonging displacement after Hurricane Ivan hit Grenada in 2004: "So you lose documents on ownership, [...] and you are now recovering – [then] comes the quarrel or the struggle over who owns what."

Not only are informal settlements built in unsafe locations but they are built using unsafe and substandard materials and methods of construction and thus offer no protection from hazards. This is not limited to informal settlements. Formally built areas do not follow or apply building codes as these are either not adequately enforced or the general public do not have the means to apply them to their dwellings. One respondent describes how: "Some households cannot afford to obey the laws and regulations of Tonga's building codes to build houses to be resilient up to a category 5 [...] they cannot afford to build houses up to these standards, and during a disaster they will be the first to move."

Displacement drivers are not limited to sudden-onset hazards. Following the drought in 2013 a group of farmers in the Dominican Republic were forced to take out a bank loan, providing their land and houses as collateral

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guarantee. In 2016, many of these farmers were displaced because they could not repay the loan on time and the banks seized the assets they had put up as security. Such indirect effects of slow-onset hazards are not registered as disaster-related displacement. This underlines the gap in the current data on displacement and the complexity of factors involved.

During the interviews, it became evident that most governments avoid discussing displacement, especially when it is internal. One respondent from the Pacific commented: "An interesting point in our region to notice is that our countries are globally leading the debate and discussion on this issue. Regionally, it's not getting a mention." Governments tend to equate displacement with failure and thus it becomes politically sensitive and damaging to even broach the subject. As a result, displacement is rarely acknowledged. One respondent in the Caribbean stated: "Displacement is not accepted, because it implies that the government is not in control. So according to the governments, there are legal procedures, resettlements, and internal migration. So the reaction to talking about displacement is blunt, there is no consciousness about the issue. This is a reality which is not accepted by most governments." This constrains any open discussion and stifles attempts to develop solutions.

Displacement situations in SIDS across the Caribbean and the Pacific often go unnoticed by the international humanitarian community, as humanitarian actors tend to prioritise their actions based on the total number of people affected, rather than on the affected ratio of the population. One respondent stated: "As a humanitarian, we are supposed to go according to needs, the highest number of people affected. So that is why a lot of the humanitarian attention is on South Sudan [where] you have tens of thousands, hundreds of thousands of people displaced. Or Somalia. But then people in the Caribbean would argue: But it is 10% of our population [affected]."

Interviewees stated that they could not provide any hard data on the overall displacement trends or current displacement figures in either region. Nevertheless, almost every interviewee was able to give

at least one example of a displacement situation, many of which were currently ongoing and of a protracted nature.

Policy neglect of disaster displacement

The review of 30 key policy documents, both regional and national, showed a general neglect of any kind of human mobility consideration. Most Caribbean countries lack any form of DRR and CCA plans and policies, while the most often mentioned risk reduction activities in relation to human mobility in both regions are evacuations, relocation and resettlement. Yet preventive relocation of communities in high-risk zones can be problematic, as these affect the livelihoods of those affected and can increase the risk of impoverishment. The potentially negative effects of relocation are discussed in very few of the reviewed documents, and not in great detail. One of the respondents stated with regards to Vanuatu: "What is mentioned now is one line about evacuation centres [...]. Other than this, there is no specific policy documents to protect the rights of those who are displaced." Fiji is currently developing relocation guidelines, and Kiribati's vision on 'migration with dignity' outlines a long-term relocation strategy not only within the country but also to neighbouring island states. With regards to the Caribbean, several respondents mentioned that relocation takes place on a regular basis but that there are no appropriate policies and plans in place.

While Pacific policies address disaster-related human mobility to a greater extent than those of the Caribbean, displacement management in both regions is reactive, and preventive measures are limited to relocation. The policies which do include displacement considerations do so only from a protection perspective. St Vincent and the Grenadines' National Disaster Plan, for example, foresees allowances for friends and relatives who shelter displaced people and includes procedures for the identification of safe locations for displaced persons in case they cannot return to their old place of residence.

Durable solutions for those displaced are not included in the policies we reviewed, nor are the effects of relocation. None of the reviewed documents seem to have been

informed by the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (the Protection Agenda)⁶ or the Guiding Principles on Internal Displacement⁷.

On a relatively positive note, early signs in current developments in the legislative frameworks on disasters and climate change in both regions point to more attention being paid to risk management and adaptation approaches. Community involvement, early warning, awareness building and education, livelihood-based approaches and hazard-zone mapping are emphasised in the policies in both regions. Such activities can all help reduce displacement risk but the extent to which the policies will go is still unclear and untested.

Current developments in the Pacific indicate an increasing awareness of displacement and a careful shift in attitude. In Vanuatu, a Displacement Policy Project is underway, aiming to build an overview of national internal displacement and forced migration patterns, while identifying challenges and gaps that need to be addressed in order to strengthen the country's ability to manage displacement and to ensure sensitive and protective durable solutions.

Closing the gaps

Not only do national governments need to have a shift of mindset but the wider debate on climate change and SIDS needs to better reflect the nuances and complexity that exist. Our research findings point to a number of issues to be considered by policymakers, the international community and researchers:

Governments need to accept disaster-induced displacement as a real, complex phenomenon and develop appropriate actions and durable solutions. Addressing displacement will require governments to develop, firstly, risk reduction activities directly targeting displacement risk and, secondly, a human rights-based framework to protect people's livelihoods and 'rights of place' – that is, their right to settle without the threat of eviction.

Caribbean countries need to strengthen their overall DRR and CCA policies. These policies, in both the Caribbean and Pacific

region, should include displacement considerations from a risk reduction and protection perspective, as recommended in the Protection Agenda.

Current systems relating to land tenure rights need modernisation to avoid problems concerning property rights in the recovery phase and to reduce the risk of protracted displacement.

The implementation of the displacement policy currently developed by Vanuatu should be observed closely, identifying its successes and failures in order to be able to develop best practices for both regions.

Regional approaches to displacement and human mobility issues should be developed to protect the rights of cross-border displaced people. The Pacific has already started negotiations on such an approach, from which the Caribbean could perhaps learn.

And, finally, work needs to be done to develop new and improved displacement measures and systems for tracking people's movements in order to determine the scope of the issue; such measures could helpfully include indicators on affected livelihoods and the perceptions of the affected populations themselves.

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Towards a regional agreement on environmental displacement?

Erika Pires Ramos, Fernanda de Salles Cavedon-Capdeville, Lilian Yamamoto and Diogo Andreola Serraglio

Efforts towards a regional agreement on migration in South America should be extended to recognise and protect those displaced for environmental reasons.

The effects of climate change influence the frequency and intensity of disasters and slow-onset environmental degradation processes, exacerbating pre-existing risks and vulnerabilities.¹ Between 2000 and the middle of 2015 an estimated eight million people were displaced or evacuated in the context of disasters in South America.² Having made progress in recent years in the area of migration, existing regional forums are in a position to contribute to a dialogue on human mobility in the context of climate change and disasters, potentially leading to the harmonization of national initiatives, a better understanding and long-term management of displacement, and the recognition and protection of environmentally displaced persons throughout the region.

Existing forums and initiatives

The sub-regional bloc the Common Market of the South (MERCOSUR) has a **Foro Especializado Migratorio** (Migratory Specialised Forum) (FEM) that is responsible for studying the impacts of migration with the aim of developing draft regulations and agreements. Its 2002 MERCOSUR Residence Agreement on the free movement of persons does not refer specifically to environmentally displaced persons but could be adapted to facilitate their movement to other countries in the region, as suggested in the European Union's Strategy on adaptation to climate change.³ Members of FEM have recognised a gap in provision for those displaced by disasters, and in 2012 MERCOSUR and Union of South American Nations (UNASUR) Member States were called upon to recognise the phenomenon of migration caused by natural hazards ('environmental migration) and to create a protocol aimed at those who migrate for environmental reasons.

One of the objectives of the intergovernmental regional organisation UNASUR is cooperation on disaster prevention and climate change, as well as on migration. It is working towards the establishment of a South American citizenship that – in addition to guaranteeing access to a wide range of rights – could facilitate the management of intra-regional cross-border movements in the context of climate change and disasters.

High-level representatives from both MERCOSUR and UNASUR have taken part in interregional dialogues including the 2016 UNASUR-MERCOSUR Dialogue on Human Rights of Migrants and Humanitarian Cooperation and the MERCOSUR Dialogue on Human Rights of Migrants: Humanitarian Crisis and Food Security of the same year. As a result of these dialogues, it was agreed that the development and implementation of instruments for risk management and humanitarian cooperation to safeguard the human rights of migrants must be taken forward at a regional level.⁴

The **Conferencia Suramericana sobre Migraciones** (South American Conference on Migration) (CSM) works on developing policies on international migration and its relationship with regional integration and development. In 2015 the CSM extended its mandate to include 'migration, environment and climate change'. The CSM can therefore now provide an important space for coordination between regional and subregional organisations to promote the issue of environmental migration and the adoption of an agreement in the region and harmonisation of existing national initiatives. In 2016, based on conclusions of a report presented by the Red Sudamericana para las Migraciones Ambientales (South American Network for Environmental Migrations)

(RESAMA) to the Technical Secretary⁵, CSM agreed to undertake a study on the links between climate change, environment and migration, and to carry out joint regional training workshops on the theme.⁶

Finally, the regional solidarity resettlement programme and other strategies that were put forward in the Mexico Plan of Action of 2004 offer durable solutions to displacement, through humanitarian visas and resettlement quotas – strategies that could equally be applied to crises caused by climate change and disasters. The **Brazil Plan of Action** of 2014 recommends that the protection measures provided for in migration and asylum legislation are evaluated for their relevance to response to cross-border movements caused by climate change and natural disasters.

In view of the vacuum in international law relating to environmental displacement, it is necessary to establish minimum standards of protection at the regional and national level. A regional agreement on environmental displacement would enable better coordination between migration, disaster risk reduction and climate change policies in the region and allow the coordination of different initiatives and instruments around a single recognition and protection system. The construction of such an agreement must be participatory, however, particularly for those communities and people who are displaced or at risk of displacement.

Challenges and future prospects

There are positive indications that environmental displacement is being discussed in the region and its forums, both through ongoing national initiatives and in regional forums capable of launching a regional negotiation process, such as the CSM. Some difficulties still hamper progress, however. These include the absence of comprehensive and detailed information on mobility in the context of climate change and disasters, the need to identify communities already displaced or at risk of displacement, the reluctance of States to accept new obligations related to migration, and the sheer number of different forums, whose initiatives,

although positive, can be difficult to turn into coordinated action and consensus.

South American citizenship could make an important contribution to this issue in terms of free movement in the region, which would facilitate the reception of people displaced for environmental reasons. However, it would not provide comprehensive protection for displaced persons. Proposals for a general regional agreement could incorporate the issue of environmental migration but there would certainly be limits to the in-depth regulation of the issue in a general migration agreement. The adoption of a regional agreement on environmental migration or a specific protocol within the framework of a regional convention on migration could be an effective solution. Such an agreement or protocol must not be restricted to the issue of reception but must also address the protection of people displaced for environmental reasons, their integration and their return in conditions of safety and dignity, presenting durable solutions rather than short-term responses.

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Could Latin American citizenship be a fourth durable solution?

Valeria Llamas

Proposals for a regional South American citizenship put forward by the Union of South American Nations (UNASUR) offer the possibility of alternative solutions for the protection of internally displaced persons and refugees in the region.

One of the goals of the Union of South American Nations (UNASUR), established in 2008, is to establish a single South American citizenship. This would be a huge and innovative step, reflecting the political will and spirit underlying a number of significant initiatives which have been introduced in the region over previous decades.

The Cartagena Declaration on Refugees, adopted in 1984, established the legal foundation for refugees in the region, based on a broader version of the 1951 Convention refugee definition, considering refugees to be “persons who have fled their country because their lives, security or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”¹

In 2002 countries of the Common Market of the South – MERCOSUR – signed an agreement granting freedom of circulation and residence for all their citizens.² Then in 2012 the countries of the (by then enlarged) MERCOSUR bloc signed the MERCOSUR Declaration of Principles on the International Protection of Refugees, pledging to identify asylum needs in mixed migratory flows (with special attention paid to gender and age) and avoid *non-refoulement*.³ The Declaration also sought to guarantee that refugees could exercise the same rights as other foreigners, promoted family reunification of refugees and established mechanisms for cooperation between the different countries’ asylum institutions. In addition, it created a regional resettlement programme to highlight the importance of harmonising national legislations and of working collectively to protect refugees arriving in the region.

In 2004, the 20 countries of the Latin American and Caribbean region and UNHCR, the UN Refugee Agency, developed the Mexico Plan of Action, reflecting concerns about the threat posed to the region’s stability by the Colombian conflict and the large number of refugees and internally displaced persons (IDPs). The Plan of Action emphasised the importance of cooperation, international solidarity and shared responsibility, aiming to strengthen the framework of international protection in order to achieve durable solutions for refugees in the region. The Plan considered that the quality of asylum was fundamental to finding durable solutions to refugee problems – that is, if protection is effective, a refugee will not need to go to a third country by means of secondary or irregular movements.

In 2014, international organisations and representatives of civil society organisations throughout the region adopted the Declaration and Plan of Action of Brazil. This regional tool to strengthen international protection in Latin America focuses on durable solutions and highlights good practices, promoting South-South cooperation and support from the international community for two specific ongoing displacement situations – growing numbers of refugees who have settled in the large urban centres of Latin America and the large number of vulnerable Colombian citizens in the country’s border areas with Ecuador, Panama and Venezuela.

Latin American political will

The establishment of the regional bodies and instruments outlined above exemplify the political will existing in the region and illustrate why the Latin

American approach – avoiding restrictive policies, allowing the regularisation of migration, and implementing measures to identify those in need of international protection – has differed from much of what happens in other parts of the world.

UNASUR was established as a space of convergence with other initiatives but with the aim of going a step further: “to build a South American identity and citizenship.”⁴ In this context, the South American citizenship that it proposes constitutes the most comprehensive, innovative and potentially durable solution to the humanitarian crisis in the region. It also represents a redefinition of the relationship between the South American countries, based on a common vision and a regional identity.

Concepts of citizenship

Among its specific objectives, UNASUR seeks to consolidate a South American identity through the progressive recognition of rights for nationals of a Member State residing in any of the other Member States, in order to allow South American citizenship and access to social security and health services throughout the region; through cooperation in the field of migration, it aims to promote region-wide recognition of human and labour rights in order to regularise and harmonise migration policies. The agreement on the exemption of visas and passports signed by the Foreign Ministers of the South American Community of Nations (predecessor to UNASUR) in November 2006 was the first step toward freedom of movement and contributed to laying the groundwork for a South American citizenship.

UNASUR was innovative in presenting the concept of citizenship based on the notion of the legal principle of *jus domicile* – right of residence. This comes from understanding citizenship as membership on different political levels, from local to regional. And it is at the intergovernmental regional level that UNASUR acknowledges the need to ‘transnationalise’ citizenship rights for all citizens and non-national citizens residing in their countries – that is, to recognise a form of belonging by virtue of the place of residence.

While South American citizenship could be considered as an alternative durable solution, it is also complementary to the needs of international protection for refugees and national protection for IDPs. UNASUR has strengthened South-South cooperation, developing a regional agenda in the face of shared problems which increasingly transcend national boundaries.

It is important to note that Resolution No 14/2014 of the Council of Chancellors of UNASUR in 2014 approved the conceptual report on South American citizenship. Similarly, sub-regional bodies (CAN – Comunidad Andina/Andean Community – and MERCOSUR), the South American Conference on Migration and the Working Group on South American Citizenship (GTCS) continue to work on a rights-based, dynamic and integrated approach; progress made on this issue was presented at UNASUR’s meeting in November 2015 in Montevideo. Since that time, the GTCS has continued to work on the issue. For UNASUR’s Secretary General, the goal of a South American citizenship embodies the organisation’s institutional and integrationist aspirations.

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4. UNASUR comprises 12 countries of the South American region: Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela. www.unasursg.org

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Turning the Comprehensive Refugee Response Framework into reality

Manisha Thomas

As they work towards the adoption of a Global Compact on Refugees, States are implementing the CRRF. How can those involved in its implementation, including new actors, best achieve this collective approach to large movements of refugees?

The Comprehensive Refugee Response Framework (CRRF), one of two annexes to the 2016 New York Declaration for Refugees and Migrants (New York Declaration), outlines a comprehensive response to large-scale movements of refugees, based on a collective approach engaging different actors and approaches. Its objective is “to ease pressures on the host countries involved, to enhance refugee self-reliance, to expand access to third-country solutions and to support conditions in countries of origin for return in safety and dignity.”¹ Fundamentally, the CRRF is about changing cultures, mind-sets and the ways we do business. It is about engaging a greater range of stakeholders, and thinking in more creative ways to enable refugees to be more self-sufficient, while better supporting the communities that host them. States are working towards the adoption of the Global Compact on Refugees (GCR) based on learning from how the CRRF is applied.

Several countries including Uganda and Tanzania have stepped forward to implement the framework. Plan International Tanzania and Plan International Uganda have supported the work of a consultant to work with the broader community to look at what needs to be achieved, and what challenges addressed, if the implementation of the CRRF is to be successful. Many of the observations and recommendations in this article draw on meetings held with non-governmental organisations (NGOs), government officials and UNHCR in Tanzania and Uganda in May and June of 2017, as well as on subsequent discussions in Geneva.²

Learning from previous attempts

The unanimous adoption by the General Assembly of the United Nations (UN) of the

New York Declaration in September 2016 was historic – never before had so many States committed to responding better to refugees and migrants. The New York Declaration commits States to developing two compacts by 2018: the GCR and a Global Compact for Safe, Orderly, and Regular Migration. While the lack of attention to internally displaced people (IDPs) is significant, this opportunity to improve our collective response to refugees and migrants should not be overlooked.

However, the CRRF and the impending GCR have been met with limited enthusiasm. It is not the first time that many of these concepts, ideas and approaches have been put forward. Many of the concepts have been tried out before, not necessarily successfully. For example, the attempt to engage a broader range of stakeholders in refugee responses – what is being termed a ‘whole of society’ approach – has been made before under numerous different names. Engaging development actors in refugee responses from the beginning is also not new. For the CRRF to succeed, it is important to learn from past attempts – and failures – to ensure that the same mistakes are not repeated, and that learning is incorporated early on. There are a number of challenges that must be tackled if the CRRF’s implementation is to be successful.

Simple, practical language: Negotiated in New York, the language of the New York Declaration and CRRF does not easily translate into practical terms. At the time of writing there is still no clear, concise or consistent description of what the CRRF means in concrete terms. Even the acronym itself means little to many people. It even prompted the High

Commissioner at the UNHCR Annual NGO Consultations in 2017 to suggest (half-jokingly) a re-naming competition.

The CRRF is meant to lead to a change in the way business is done, both by those stakeholders who are currently involved and by those that should be. Simply relabelling ongoing efforts and programmes or resurrecting old ideas will not be sufficient to achieve the step-change required. There is a pressing need for communication and practical guidance showing clearly what is new and different, which can then be contextualised in each of the CRRF countries. Otherwise the risk is that differing interpretations of the CRRF simply lead to a repackaging of ongoing activities.

Engaging local, district and regional authorities: States agreed the New York Declaration but it is unclear how much consultation there was with local, district and regional authorities – those who

respond to refugees on a daily basis. These stakeholders also need to be brought into the implementation process early on, to ensure not only that their input is heard but also that they are given the support needed to lead this different way of responding.

Refugees often fall under the purview of a Refugee Commissioner or a particular ministry. The CRRF, however, foresees delivering services for both refugees and host communities. This shift would require the engagement of the ministries responsible for those services (for example, health, education, water and sanitation). Engaging these ministries will be essential in order to change the way that responses are planned, designed, budgeted and delivered. Without the authorities' early engagement and commitment, it will be difficult to ensure that refugees are included in local or district development plans, as well as national ones. It will also be at these local and regional planning levels, in



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particular, that gender, age and diversity issues can be incorporated and addressed.

Hearing refugee and host community voices:

Finding ways to listen to the priorities and ideas of refugees – especially refugee women and girls – and to involve them in decision making as much as possible will be essential for the CRRF's successful implementation. Including refugee and host community youth will also be important. As with many such processes, the challenge is to find a way to engage people in a meaningful way that does not raise expectations unduly. Consultation fatigue is already happening in Tanzania, with the CRRF yet to really start being implemented. A coordinated approach to engaging communities needs to be developed for use in participating countries if the views of refugees and host communities are to be incorporated.

Breaking down silos: For decades there have been initiatives to get humanitarian and development actors working better together and to ensure a smoother transition from emergency to development responses. The terminology has changed over the years – from 'divide' to 'gap' to 'nexus' – and improvements have been made but the goal remains elusive. The CRRF presents another chance to achieve this ambition.

Humanitarians and development actors have distinct backgrounds and different approaches, their coordination mechanisms are different, they engage with different parts of government, and they often have different donors. Many of these donors have their own silos, although some donors are working to provide more flexible financing and streamlined approaches. After many years, the World Bank and other development banks are finally finding ways to better engage with displacement responses but they also come with their own cultures and ways of working. Donor commitments to aid effectiveness need to be a part of the CRRF's implementation.

Currently, there is no coordination forum to bring together a broadly representative group of humanitarian and development actors and other whole-of-society stake-

holders, including government, donors, private sector actors and development banks. The challenge will be to create representative – yet not inefficient – coordination mechanisms that bring them together to collectively agree outcomes. Any such forum must not, however, compromise the speed of humanitarian response or principles.

Shifting mind-sets: For the CRRF to work there will need to be a shift in the mind-sets of those actors traditionally involved in refugee responses. Humanitarian organisations should look to hand over to other actors much more quickly than they would normally do. Development actors should examine how they can become more flexible and responsive to the needs of refugee-hosting areas and communities. These shifts are, of course, easier to describe than implement. The CRRF secretariats and steering committees being set up in several countries can play an important role in pushing for these changes. Organisations that provide both humanitarian and development responses, such as NGOs, may be able to help navigate between these two operating cultures.

Previous attempts to change mind-sets have not had the necessary time, space or clear incentives, with institutional 'turf' battles often resulting in good ideas not being implemented. Institutions rely on their profile and ability to attract funding in order to operate. The CRRF – if implemented properly – will mean that many organisations, particularly humanitarian organisations, could see a reduction in the amount of work that they need to do as other actors enter the arena. That will be a fundamental challenge to their usual ways of working, to their financing and, potentially, to the number or types of staff they employ. These existential threats to organisations will probably meet with resistance but must be openly addressed.

Setting realistic timeframes: While short-term advances are necessary to maintain momentum, a longer-term perspective is necessary to bring about the hoped-for changes. In some countries, bringing refugees into national development plans will mean

waiting until the next plan is developed. A more realistic timeframe of five to eight years would allow the time necessary for systemic changes to be put in place.

Responsibility sharing: The GCR presents the opportunity to put global responsibility sharing into much more concrete terms but it will take a great deal of political will to really examine how the responsibility to provide protection and assistance to refugees can be shared more equitably. Without this global approach those countries hosting the world's largest numbers of refugees may be unable to cope – especially when the resources required to support even the most basic needs of refugees are not being provided. Many refugee responses in CRRF countries are already struggling. With insufficient funds to respond to basic needs, how will the CRRF be implemented there and elsewhere?

Addressing root causes: While the CRRF rightly focuses on the various elements and phases of displacement, one of its most

important objectives is to address root causes. In the New York Declaration, States have committed not only to tackle the root causes of violence and armed conflict but also to work towards political solutions and the peaceful settlement of disputes, and to assist in reconstruction. If States take these commitments seriously, the numbers of people fleeing will decrease and the potential for durable solutions becomes more likely.

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2. The full report on which this article is based is available at <http://bit.ly/PlanInternational-CRRF-2017>

CRRF coordination structures: involving new actors

Tanzania's CRRF Secretariat is co-chaired by the Ministry of Home Affairs and the President's Office, Regional Administration and Local Government (PO-RALG). Its members include government line ministries, regional authorities, UN agencies, civil society (including humanitarian and development NGOs), the World Bank and actors from the private sector and academia. Several of those government offices involved in the Secretariat's work have not been involved in refugee issues before; this new approach facilitates the inclusion of refugees in national development plans and budgets. The Tanzanian Secretariat and similar forums under government leadership in other roll-out countries are tasked with developing clear strategies to engage local, district and regional authorities in the implementation of the CRRF, and establish mechanisms for sustainable and predictable engagement with refugee responders.

In Somalia, at a regional level, Member States of the Inter-governmental Authority on Development signed the Nairobi Declaration in March 2017, committing to pursue together a comprehensive approach to finding durable solutions for Somali refugees, and agreeing to a set of commitments. Refugee

policies in neighbouring host countries will be connected to Somalia's national development plan, with a view to fostering conditions for sustainable return. Inside Somalia, the CRRF seeks to support the government in its State-building and peace-building efforts. Importantly, the CRRF contributes to existing frameworks, including the Durable Solutions Initiative, the Comprehensive Approach to Security, and the Fiscal Reform Agenda. Efforts underway under the CRRF include the organisation of a national forum on refugees and IDP solutions by the Government of Somalia, and a regional roadmap with national action plans of countries in the region hosting Somali refugees to support the principles of the CRRF and facilitate the reintegration of Somali refugees. Among these initiatives are the EU-funded RE-INTEG projects, designed to support sustainable reintegration of refugee returnees and the local integration of IDPs. With the EU's support, UNHCR, UN-HABITAT, UNDP and IOM are implementing a range of multi-sector community-based initiatives in Kismayo and Mogadishu.

For information on all participating countries, see the CRRF Global Digital Portal <http://crrf.unhcr.org/en>

Towards a development approach to displacement

Xavier Devictor

To better respond to displacement, we need to adopt a medium- to long-term perspective rooted in development as well as humanitarian principles.

There is general consensus that displacement requires not just a humanitarian response but also a development response. There is less consensus, however, on what a development response actually is, and how it differs from a humanitarian one. The need to resolve this uncertainty is pressing, with some 66 million people currently displaced by conflict and persecution, most of whom are hosted in a relatively small number of developing countries.

For development institutions, displacement poses significant challenges to achieving the Sustainable Development Goals. In some regions, as pressures increase to close borders, the consensus on the benefits of free movement of people and goods that has underpinned global growth is being challenged. In others, the size of the refugee populations creates risks that could undermine stability in and beyond the region. In a number of situations, displaced people are uprooted for extended periods of time, making traditional humanitarian responses insufficient.

A development approach

Development actors need to focus on the medium-term socio-economic dimensions of a crisis. As part of a broad international effort that also includes humanitarian, security and diplomatic elements, development actors need to focus on what they can do best, not replacing others' agendas but complementing them. They can provide medium-term resources and foster economic opportunities. They can support governments, and leverage the private sector and civil society. They can help strengthen policies and institutions in host countries. The development framework is one of poverty reduction, with a focus on both the displaced and their hosts. But this plays out very differently across countries. Development

actors need to identify the medium-term goals that can be achieved in a given context and to adjust their specific objectives and their programmes to each situation.

Displaced people are of particular concern to the development community because of the specific vulnerabilities arising from their situation. They have lost their assets. They have undergone traumatic ordeals. They often have fewer rights and less ability to exercise them. Most live in places where opportunities are limited. The uncertainty of their situation makes it difficult to plan or invest. These vulnerabilities affect their ability to seize economic opportunities, and often trap them in poverty. It is because this combination of vulnerabilities is specific to displaced people that traditional poverty reduction efforts may not suffice, meaning special interventions are needed. The development response hence aims to help mitigate, or even eliminate, these vulnerabilities, in order to restore displaced people's socio-economic capabilities.

Host countries and host communities also require support. The arrival of large numbers of people creates both risks and opportunities – in terms of national security, jobs, services and social cohesion. Some impacts are positive, some negative, and some members of the host community benefit while others lose out. In most situations this transforms the environment in which poverty reduction efforts are being designed and implemented. Development actors can help host countries and communities to deal with these circumstances and to continue to make development progress in a transformed context, while providing an accepting environment for the displaced.

Supporting change

The World Bank Group has recently established two facilities to support programmes for refugees and host

communities. The Global Concessional Financing Facility (GCFF) uses a mechanism to make traditional development loans for middle-income host countries, such as Jordan and Lebanon, significantly cheaper. Over the next five years, the GCFF plans to raise US\$1.5 billion in grants and to provide \$6 billion in concessional financing. A dedicated \$2 billion, made available through the International Development Association (IDA), the World Bank's arm for low-income countries, will provide host countries such as Ethiopia and Pakistan with additional resources.

These resources will be disbursed through traditional development mechanisms, typically government entities, with a focus on supporting policy and institutional changes to improve management of a crisis. The significant uptake of such financing to date suggests there is a window of opportunity to support change in several host countries. Country-level programmes have been designed in coordination with humanitarian and other actors, and development actors can contribute to supporting this change in a number of ways:

Data and evidence: Improving the evidence base necessary to design successful programmes is critical. Reliable data are scarce, and empirical analytical evidence on what works is even scarcer. Yet this is needed to inform policy recommendations, develop sound interventions, and enable effective synergies between all actors.

Preparedness: Most displacement can be forecast, and for many host countries refugee flows are a recurring phenomenon. There is often an opportunity to shift from a crisis response to a preparedness agenda and this could have a significant impact. Warning systems, contingency plans and institutional readiness are critical to mitigating negative impacts on development, for both displaced people and their hosts.

Early response: Decisions made in the first weeks of a crisis tend to have a lasting impact, for example on the location of refugee settlements or on the sort of agreement

struck with the authorities. Integrating a medium-term socio-economic perspective in these discussions is critical for the overall sustainability of the effort. Early development interventions can also help reduce humanitarian costs, for example reducing the need for trucking water by reinforcing water supply systems.

Jobs: Self-reliance is both an economic necessity and a key element in human dignity. To facilitate this, development actors need to engage with host governments on issues such as the right to work or freedom of movement, address long-standing development issues (most host economies have a poor business environment), and work with the private sector – as is currently happening in Jordan under the Jordan Compact.

Education: Over half of displaced people are children. Their education is of paramount importance not only for them but also in order to build a new generation that can contribute to lasting peace in their country of origin – and to avoid the large-scale disenfranchisement that can breed further violence. Development actors can help strengthen country systems and design education solutions adapted for these children, with a particular focus on building portable skills.

Less-developed regions: Most refugees are hosted in remote parts of countries that are typically among the poorest. Development actors can help strengthen infrastructure and service delivery in these areas to improve development prospects for both refugees and their host communities.

Solutions: Development actors need to focus on achieving solutions to displacement – whether return, integration or resettlement – that are fully sustainable from a socio-economic perspective. This could be achieved by helping to manage the long-lasting socio-economic impacts of displacement through economic opportunities. People who continue to struggle after years

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of exile in camps and other temporary environments may need particular support.

Beyond the humanitarian-development nexus

The activities of humanitarian and development actors have long been seen as sequential, with an initial humanitarian response followed by a development effort when the situation becomes protracted. In many cases, however, the two approaches can be complementary throughout the entire

period of displacement. What is needed, therefore, is a crisis response that is rooted in a medium- to long-term perspective – one that necessarily includes development.

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This article draws on the World Bank Group's report *Forcibly Displaced: Towards a Development Approach Supporting Refugees, the Internally Displaced, and Their Hosts* www.worldbank.org/forciblydisplaced

ASEAN's role in the Rohingya refugee crisis

Richa Shivakoti

The Rohingya refugee crisis has become a regional crisis. Members of the Association of Southeast Asian States (ASEAN) must enhance regional cooperation in order to improve protection for the region's refugees.

Myanmar's estimated one million Rohingya, a Muslim minority group from Rakhine State, are not recognised by the Government of Myanmar as one of the country's 135 ethnic groups, have no legal documentation and are therefore stateless. With large-scale violence against them in 2012 and 2015 by other groups in Rakhine State as well as by the government, many Rohingya have been forced into IDP camps or to neighbouring countries where they live in dire conditions. In 2016 UNHCR, the UN Refugee Agency, estimated that over 168,000 Rohingya had fled Myanmar since 2012,¹ and since violence erupted again in August 2017 further hundreds of thousands have crossed the border to Bangladesh.

Although international responses to the violence have previously been mixed, with governments focused on supporting Myanmar's fragile democratic reform, there has also been ample criticism from different quarters about the Government of Myanmar doing too little to protect the Rohingya population. A report by the United Nations High Commissioner for Human Rights stated in 2016 that violations of the human rights of the Rohingya Muslims may suggest "the possible commission of crimes against humanity, if established by a court

of law"², and a very critical report by the International State Crime Initiative of the previous year concluded that "the Rohingya face the final stages of genocide"³. More recently, Myanmar's de facto leader, Aung San Suu Kyi, has been widely criticised by the international community for not sufficiently condemning the renewed violence.

A regional crisis

The first responsibility to protect the rights of the Rohingya Muslim population lies with the Government of Myanmar. Avoidance of the issue or insistence that the term 'Rohingya' is not used because it is controversial is not tenable. Firstly, the government needs to resolve the protracted statelessness of the Rohingya population, since their lack of citizenship has left them vulnerable to discrimination and abuse. As a newly recognised democratic state, Myanmar must respect the different ethnicities and religions within the country, without systematically discriminating against any one group. Years of conflict and violence in Rakhine State, which has attracted press coverage despite tight governmental control of the region, have sapped international goodwill. As Rohingya Muslims have fled

to neighbouring countries, Myanmar can no longer insist that this is an internal issue and instead must work with Bangladesh and members of ASEAN to address the situation.

The Rohingya crisis has become, in five years, a full-blown humanitarian crisis that has regional consequences. It poses a critical test for the 10-member ASEAN⁴ and its institutions, highlighting ASEAN's lack of a political and legal framework to deal with issues related to refugees. Among the ASEAN nations, only two (the Philippines and Cambodia) are parties to either the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol. The 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers only focuses on migrant workers and does not mention refugees or asylum seekers.

The plight of the Rohingya has been compounded by the response of several Southeast Asian nations who in 2015 turned away boats carrying thousands of desperate Rohingya. Intensified international pressure and media scrutiny over their refusal to help the boat refugees finally resulted in Indonesia and Malaysia permitting people to land on a temporary basis. It also led to several crackdowns on the human traffickers engaged in transporting Rohingya. In May 2015, both Thai and Malaysian authorities found

mass graves, believed to be of Rohingya, at abandoned human trafficking camps along their shared border. This led members of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (which has 45 state members) to acknowledge the need for an urgent and collective response on such issues. They agreed to have a mechanism that would grant the co-chairs Indonesia and Australia the authority "to consult, and if necessary, convene future meetings to discuss urgent irregular migration issues with affected and interested countries in response to current regional issues or future emergency situations".⁵

A distinctive principle of the ASEAN Charter is that of "non-interference in the internal affairs of ASEAN Member States".⁶ Despite this principle, due to increased tensions in the region following the 2015 Rohingya refugee crisis some Muslim-majority countries, such as Malaysia and Indonesia, began to take a stronger stance on the protection of the Rohingya Muslims. Although Indonesia had stated that the Rohingya crisis is a regional problem, it has followed the non-intervention principle, emphasising that it would pursue its policy of 'constructive engagement' rather than put pressure on Myanmar. Malaysia, on the other hand, was vocal in condemning Myanmar's



Rohingya refugees from Myanmar arriving in Cox's Bazar district, Bangladesh, September 2017.

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treatment of the Rohingya: its Prime Minister Najib Razak told a rally in Kuala Lumpur in 2016 that the “world cannot sit by and watch genocide taking place”.⁷ The Organization of Islamic Cooperation also held an emergency ministerial meeting in Kuala Lumpur in January 2017 to discuss the situation, at the request of the Government of Malaysia. Malaysia has emphasised that the plight of the Rohingya Muslims is a regional concern and has called for ASEAN to coordinate humanitarian aid and to investigate alleged atrocities committed against them.

This increased regional and international criticism resulted in the Government of Myanmar taking some steps to try to ease concerns. At Malaysia’s request, Aung San Suu Kyi called a special informal meeting with ASEAN foreign ministers in Yangon in December 2016 to discuss international concerns over the situation. Suu Kyi said that Myanmar would provide regular updates on the crisis to fellow ASEAN members and possibly work with them to coordinate aid efforts. The Government of Myanmar also allowed several pre-approved media members to visit Maungdaw, one of the main sites of the conflict. Suu Kyi also established an Advisory Commission on Rakhine State, chaired by Kofi Annan and including six national and three international members. In its final report, published in August 2017, the Advisory Commission recommended several ways in which to improve accountability and find long-term solutions to the protracted statelessness of the Muslim community in Rakhine State. It also suggested that Myanmar could improve bilateral relations with Bangladesh and that both nations should facilitate the voluntary return of refugees from Bangladesh to Myanmar through joint verification. It also recommended Myanmar’s continued engagement with its ASEAN neighbours, briefing them regularly on the broader dimensions and regional implications of the situation in Rakhine State.⁹

Conclusion

The continuing Rohingya crisis has shown how ill-prepared the region is to deal with such a movement of refugees from one

member state to others. The meetings that have taken place between ASEAN Member States to discuss the crisis are a good start but the situation needs close monitoring if better regional cooperation is to lead to improved protection for its refugees. Member States must develop a refugee and asylum policy that includes guidance for action to be taken when a Member State’s internal issues cause people to flee to neighbouring states. Such a policy – agreed by all ASEAN Member States – would furthermore help to ease both the escalation of opposition and any future ethnic or religious tensions between States. Any future conflicts can be addressed through the ASEAN Intergovernmental Commission on Human Rights but this body must be strengthened, lacking as it does the mandate to protect and investigate. ASEAN as yet lacks a Human Rights Court to interpret and enforce the ASEAN Human Rights Declaration, a further factor that must be remedied if the region’s refugees – including Rohingya – are to be protected.

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Refugees in towns: experiences of integration

Karen Jacobsen

In countries of first asylum, transit and destination it is increasingly towns and cities that are absorbing refugees. We must look at what is happening at a local level to better understand urban integration as a process shared by refugees and host communities alike.

Towns – especially border towns in countries of first asylum – are at the frontline of refugee displacement and are often where refugees settle or spend long periods of time. When refugees move into a town they change the fabric of social, political, cultural and economic relations, which in turn influences the refugees' own experiences. The Refugees in Towns (RIT) project at the Feinstein International Center, Tufts University, is a new initiative that seeks to deepen understanding of urban refugee integration through highlighting the dual experience of refugees and the towns where they have settled. Academic and policy research tends to focus on the national or global level, seldom bringing a local lens to the story. The RIT project explores integration as it happens in towns, which is an important dimension missing from our understanding both of refugee integration and of urban development.

The RIT project draws on a range of methods to develop case-studies of towns and cities that have received refugees.¹ Using qualitative research approaches it focuses on the 'ground-up' experience of host towns and refugee neighbourhoods within large cities. Research is conducted by people who live or work there, and each case-study presents a different angle depending on the perspective and interests of the researcher. The case-studies document the experiences of both refugees and hosts, and the impact an urban refugee population has on local services, on the governance of cities, and on social cohesion. The RIT project's scope is global and case-studies are already underway in North American towns where refugees have been resettled, in transit countries (Mexico and Greece) and countries of first asylum (including South Africa, Lebanon and Turkey).

Academically, the findings from the case-studies will strengthen theory building about refugee integration through documentation and analysis of the ways in which urban refugee and host communities evolve side by side. Practically, the project supports urban policy at the local level by providing guidance and information to community leaders, NGOs and town officials. Our aim is to help shape towns as immigrant- and refugee-friendly urban spaces that take full advantage of the benefits brought by refugees and to identify what practices work well in addressing the challenges of integration.

Why this project now?

In January 2017, the new Trump administration began to try to shift United States (US) refugee policy through introducing travel bans and suspending parts of the refugee programme. Towns across the US responded in different ways, some declaring themselves 'sanctuary cities' and offering other forms of resistance, while others supported Trump's efforts. These political developments at the federal and local levels are bound to affect the integration experience of both newly arrived and long-standing refugees and asylum seekers. Globally, the same political dynamics are at work. In countries of first asylum such as Jordan and Libya, in transit countries such as Greece and Mexico, and in destination countries such as Germany and Sweden, it is towns and cities that are absorbing refugees and migrants. It is crucial that we understand this experience and find ways to support towns where, in many cases, refugees will remain for long periods. The case-studies will:

Map the refugee population: By quantifying the distribution and size of different refugee populations by nationality in the town

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each case-study will create a map showing whether and where refugees are clustered in particular areas and how this distribution has changed over time. It will show, for example, where refugees have relocated from other parts of the country to join an 'anchor community', as with Somalis coming from elsewhere in the US to join a long-standing community in Lewiston, Maine.

Document refugees' experiences: The case-studies will document economic and financial aspects: how refugees pursue livelihoods, their sources of income and support (both local and transnational) and their financial obligations (such as debts to smugglers and repayment of IOM travel loans). Furthermore, they will examine whether refugees have become politically active, exploring forms of mobilisation and the kinds of local and transnational social and political networks that have emerged. They will also investigate refugees' own understanding of integration, and explore refugees' attitudes towards the future.

Explore urban impact: Each case-study will explore the economic impacts of the refugees on the town, including on employment, business creation, trade links and the housing/rental market, as well as their impact on services, such as health and education, and on infrastructure, including transportation and water. Each case-study will examine how residents and urban authorities experience and interpret these impacts, and how they have responded socially and politically. The project will also identify how the municipal authorities and mayors have responded to refugee arrivals, and how they have sought to manage relations with the national or state government.

While these three broad investigative areas are intended as guidance for case-studies, we encourage other themes or avenues of investigation.

Contributing case-studies

If you are a refugee, aid worker or resident in a town hosting refugees, we encourage you to write a case-study. Where appropriate

we can pair you with a graduate student from Tufts University or elsewhere, who can help you with the different aspects. We also welcome submissions of independently conducted case-studies. Our goal is to hear different voices and local perspectives on how urban integration happens and we encourage case-studies that reflect diverse political viewpoints and voices.

Case-studies will be reviewed and added to the RIT database and be publicly available through the project's website. Each profiled town will have its own web page, initially 'owned' by the original researcher who can invite others to add to the case-study materials. We seek to use a variety of research approaches, including visual media such as documentary, theatre and dance, and we encourage creative approaches by artists of all kinds.

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1. A more detailed explanation of our research methods is available at <http://fic.tufts.edu/research-item/refugees-in-towns/>



Football team SV Babelsberg 03 of Potsdam, Germany, formed a 'Welcome United' team for refugee footballers, who are now fully integrated members of the club, with the same rights and obligations.

Canada's Guideline 9: improving SOGIE claims assessment?

Moira Dustin and Nuno Ferreira

Asylum seekers making claims relating to their sexual orientation and gender identity often face unfair refusal. New guidance from the Immigration and Refugee Board of Canada takes admirable steps towards improving claims assessment, and offers a model for practitioners elsewhere.

The Immigration and Refugee Board of Canada's 'Guideline 9: Proceedings before the IRB Involving Sexual Orientation and Gender Identity and Expression' (SOGIE Guideline) has been in effect since May 2017. It addresses a number of the recurring concerns about asylum claims based on sexual orientation and gender identity and expression¹ (SOGIE) that have arisen in case law, statutory instruments and guidance around the world.² These concerns, which have been common reasons for refusing SOGIE-based asylum claims in Europe, relate to: qualification as a member of a particular social group for the purposes of the 1951 Refugee Convention; whether applicants can return to live 'discreetly' without risk; whether laws criminalising homosexuality in the applicant's country of origin constitute persecution in themselves; the use of gender and sexual stereotypes to inform asylum decision making; whether sexually explicit evidence is asked for or expected in asylum cases; and late disclosure as the basis for refusal of international protection. These were the subject of Court of Justice of the European Union (CJEU) rulings in 2013 and 2014.³

The Guideline makes many good provisions. Citing a 1993 decision⁴ the Guideline is clear that individuals presenting asylum and migration SOGIE-based claims are "**characterized as a particular social group**". It also recognises that the fears of SOGIE asylum seekers' family members may also warrant consideration under the same Refugee Convention ground, which is welcome, if not particularly new to European audiences.

On the issue of **discretion**, the Guideline asserts that claimants should not be expected

to be "discreet" about their SOGIE in order to avoid persecution. It thereby avoids the line of questioning – as in, for example, UK guidance – about the possibility of living discreetly in the country of origin.⁵

The Guideline is robust on the need to avoid **decision making based on stereotypes**, offering a good range of examples of potential pitfalls, such as making assumptions that SOGIE applicants will participate in LGBTIQ+ culture in Canada. This seems to go beyond the 2014 CJEU decision, which precludes decision making that is based on stereotypes but still leaves room for questions based on them, provided these questions are part of an overall balanced line of questioning.

The Guideline positively acknowledges that instances of **late disclosure** are acceptable and can be justified under certain circumstances. The statement that an individual "may reasonably delay making a claim for refugee protection based on SOGIE" in a number of situations goes further than any other guidance we have seen. Moreover, the Guideline rightly alerts decision makers to the need to consider very carefully any negative weight attached to inconsistencies, including those arising from late disclosure, which may be due to "cultural, psychological or other barriers". The Guideline could have gone further, however, by requiring decision makers to offer asylum claimants the opportunity to clarify any (perceived) inconsistencies or issues affecting their credibility before a decision is issued.

The Guideline furthermore acknowledges that it is unreasonable to expect SOGIE asylum claimants to **approach public authorities** – in their countries of origin – for protection, especially when laws

criminalising non-conforming SOGIE are in place and enforced. The Guideline rightly focuses on the “operational level”, rather than what is enshrined in the statutory framework of the country of origin. Moreover, it gives unprecedented attention to the importance of decision makers accepting *sur place* claims and being sensitive towards the slow processes of self-acceptance many SOGIE asylum seekers experience.

The quality and relevance of **country of origin information (COI)** has been a recurrent theme in asylum studies, particularly in relation to SOGIE individuals.⁶ The Guideline acknowledges the problematic use of COI in these cases by recalling that under-reporting of discriminatory or persecutory practices in countries of origin may reflect local attitudes towards, rather than the absence of, such practices.

However, on the **notion of persecution** the Guideline’s reasoning is disappointingly conservative. It refuses to equate criminalisation of same-sex conduct and other SOGIE-related repressive norms with persecution. Instead, it simply states that “being compelled to conceal one’s SOGIE constitutes a serious interference with fundamental human rights that may therefore amount to persecution”. In this and elsewhere it leaves too much leeway for denial of asylum to people living under repressive and discriminatory legal frameworks. This is at odds with its recognition of the impact of cumulative discrimination elsewhere.

Unexpected additions

In addition to these elements of welcome progress, the Guideline takes other, less expected, steps. Its **approach to terminology** is unusual, with its inclusion of the term “expressions”: sexual orientations and gender identities and expressions. This is a positive development, as the focus is on individuals’ characteristics rather than their overall LGBTIQ+ identities. Decision makers should thereby be encouraged to show more sensitivity to individuals’ range of characteristics and how these intersect. This is in line with the emphasis on intersectionality throughout the Guideline

and makes the exclusion of individuals with particular identities who do not identify as LGBTIQ+ less likely. A further step would be to include sexual characteristics, making the acronym ‘SOGIESC’.

This positive choice of terminology is allied with an equally positive acknowledgment that gender is not binary but instead sits on a spectrum. Interestingly, heterosexual individuals also fall within the scope of these Guidelines where they do not – or do not appear to – conform to socially accepted SOGIE norms. Moreover, the Guideline acknowledges the lack of “standard terminology” **to capture the complexity of understandings of SOGIE** across different cultures and societies, with the aim of averting culturally and socially inappropriate notions and expectations in migration and asylum adjudication procedures. Finally, it directs authorities and interpreters to address individuals respectfully using their chosen name, terminology and pronouns. The Guideline should be praised for its positive language and fluid approach to definitions and identifiers.

Also to be applauded is its consistent reference to how SOGIE **interests with other characteristics**, such as race, ethnicity, religion, faith or belief system, age, disability, health status, social class and education. Moreover, it makes excellent use of intersectionality to highlight that this range of characteristics may affect all aspects of migration and asylum procedures, including individuals’ testimonies, relationships with authorities, and different stakeholders’ notions of persecution.

Crucially, the Guideline hints at the restrictive traditional application of the 1951 Refugee Convention grounds. While decision makers generally expect asylum seekers to lodge their claims on the basis of one particular Refugee Convention ground, the Guideline highlights that SOGIE individuals may reasonably lodge a claim on the basis of a combination of any of the five Convention grounds. In this way, the Guideline moves away from defining individuals on the basis of their SOGIE alone. As we note below,

however, this is somewhat at odds with the Guideline's own term "diverse SOGIE".

The Guideline is to be applauded for recognising that many SOGIE individuals should be **classed as "vulnerable"** to be protected under any provisions that might be applicable; it also rightly alerts officials to the need to adopt additional safeguards for the protection of sensitive information. In an unexpected and groundbreaking move, the Guideline refers explicitly to **SOGIE children** and alerts decision makers to their particular vulnerability. Its reference to the principle of the best interests of the child again reflects the principle of intersectionality – making connections beyond the field of refugee law.

Finally, the Guideline adopts a respectful approach towards SOGIE individuals' **family rights** and acknowledges the difficulties they may face in proving their spousal or conjugal relationships. In highlighting the importance of avoiding preconceived notions about such relationships the Guideline also calls on decision makers to consider the "unique circumstances" that SOGIE individuals face. These circumstances ought to be taken into consideration, it suggests, in the assessment of humanitarian and compassionate grounds in sponsorship appeals.

Shortcomings

In a rather surprising shortfall in relation to **evidentiary standards**, the Guideline simply states that individuals are not "expected (...) [to] establish their SOGIE through the use of sexually explicit photographs, videos or other visual material". This feeble phrasing leaves excessive room for individuals to feel under pressure to submit this sort of evidence to strengthen their cases. The CJEU has gone beyond this, by completely precluding the use of sexualised evidence in SOGIE asylum cases, thus more effectively protecting the dignity of asylum claimants, and it is regrettable the Guideline did not adopt a similar approach. Only the elimination of any scope for using sexualised evidence in asylum and migration procedures will remove the pressure on applicants and their legal representatives to make

use of this possibility as a last, desperate resort to prove their sexual orientation. Despite the merit in using characteristics (SOGIE) rather than identities (LGBTIQ+) as its **terminology**, the Guideline's use of the SOGIE acronym is troubling. The text not only refers to "claims based on SOGIE", but also repeatedly refers to individuals "with diverse SOGIE". "Diverse" in relation to what? The answer would appear to be, in relation to the heterosexual majority. While that difference is undoubtedly the source of the persecution, stigma and discrimination suffered by individuals who claim asylum on the basis of their SOGIE, in using "diverse SOGIE" the Guideline inadvertently reinforces a perceived divide between 'standard' heterosexuality and 'deviant' non-heterosexuality. Referring either to "individuals who claim asylum on the basis of their SOGIE" or, for the sake of linguistic simplicity, "SOGIE asylum seekers" would be greatly preferable. Unfortunate **phrasing** is also used elsewhere. The Guideline refers to forced medical treatments, stating that "[i]ndividuals with diverse SOGIE may be forced to undergo medical treatment including 'corrective sexual violence'" and other non-consensual procedures. This wording implies that these practices are "medical treatments", when in fact they are closer to torture or cruel, inhuman or degrading treatment or punishment, under Article 7 of the 1966 International Covenant on Civil and Political Rights.

Conclusion

We welcome and largely endorse this Guideline. The Guideline responds to asylum seekers' needs and experiences in a number of ways that are absent from most officially approved asylum guidance instruments, covering scenarios such as joint claims, persecution by association, SOGIE minors and the need for additional safeguards to limit public dissemination of sensitive material. While bearing in mind the gap that often exists between guidance and practice, the Canadian Guideline breaks new ground and in many areas provides a model of good practice for other authorities and jurisdictions.

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1. While 'sexual orientation and gender identity (SOGI)' seems to be more commonly used, the Guideline also includes 'expression' (thus leading to the acronym 'SOGIE') to highlight the relevance of the expression of one's sexual orientation and gender identity.

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4. *Canada (Attorney General) v Ward* [1993] 2 S.C.R. 689 <http://bit.ly/Canada-Ward-1997>

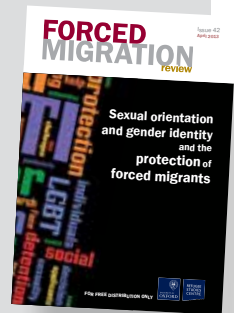
5. Home Office (2016) *Asylum Policy instruction Sexual orientation in asylum claims Version 6.0* <http://bit.ly/UKGov-SOGI-6-2016>

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7. European Asylum Support Office (2015) *Researching the situation of lesbian, gay, and bisexual persons (LGB) in countries of origin*, EASO Practical Guides Series <http://bit.ly/EASO-LGB-Guide-2015>

FMR issue 42www.fmreview.org/sogi

Around the world, people face abuse, arbitrary arrest, extortion, violence, severe discrimination and lack of official protection because of their sexual orientation and/or gender identity. This FMR issue, published in 2013, includes 26 articles on the challenges faced and examples of good practice in securing protection for lesbian, gay, bisexual, transgender or intersex (LGBTI) forced migrants.



All articles are available online in HTML, PDF and MP3 formats. To request print copies in English, Arabic, French or Spanish, please email fmr@qeh.ox.ac.uk, stating number of copies required (in which languages) and your full mailing address.

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