

Chapter 2

Vulnerability and protection: reducing risk and promoting security for forced migrants

Forced migration is a significant cause of vulnerability and a major threat to protection. The increasing complexity and unpredictability of violence and conflict accentuate vulnerability and diminish the scope for protection. At the same time, increasingly restrictive migration regimes worldwide reflect shrinking protection space for forced migrants.

This chapter outlines displacement vulnerabilities and their root causes and discusses how people find protection. It reviews gaps in political frameworks and looks at challenges in enhancing protection.

There is no universally agreed definition of vulnerability among humanitarian actors, but there is shared agreement about general principles - the ability of individuals, communities or societies to anticipate, cope with and recover from disasters.

The International Federation of Red Cross and Red Crescent Societies (IFRC), the ICRC and National Societies have generally defined their role as stemming from a migrant population's vulnerability itself rather than distinguishing among reasons for migration. The scope of the Movement's work includes humanitarian assistance, family links, protection, advocacy and community links.

The World Bank's *World Development Report 2011* illustrates how wars have declined over the last 25 years and deaths from civil war are one-quarter of what they were in the 1980s, but violence and conflict still affect one in four people globally. They risk becoming trapped in conflict zones, particularly with increasingly restrictive migration regimes and shrinking protection space.

These implications for humanitarians' response to vulnerability are twofold. Firstly, in most contemporary situations, violence may erupt spontaneously and derive from multiple triggers, leading to great uncertainty. These conditions – neither war nor peace – generate high levels of vulnerability.

The changes in the types of vulnerability to which forcibly displaced people are exposed are also profound. The *deprivation* caused by war, not just direct attacks, create vulnerability.

People are forced to flee to areas with similarly limited access to markets, institutions and civil society. Vulnerability may be just as acute when movement is restricted by curfews, roadblocks, closed borders or forced return to unsafe areas, for example in Somalia.

The changing characteristics of disaster necessitate reappraisal of vulnerability. One example is increasing vulnerability due to climate change. Other slow-onset challenges like water scarcity, food insecurity, global financial crises and sub-standard urban environments are less immediately dramatic.

As the world urbanizes, vulnerability increasingly shifts to cities where proportionately more people now live. Moreover, the majority of refugees and IDPs now settle in urban areas.

These examples point to two conclusions. Firstly, vulnerability is multi-dimensional and dynamic. Increasingly, populations are exposed to a range of vulnerabilities – livelihoods, health, nutritional status, environmental and shelter conditions. Secondly, in virtually all situations where people become vulnerable they are also exposed to significant protection gaps.

Protection is a recognized responsibility of states. When they cannot provide it, international law – in particular international humanitarian law (IHL), international human rights law (IHRL) and refugee law – provides for protection by others.

Although international law makes reference to protection, it does not define it. In the aftermath of the horrors of Rwanda and Bosnia and Herzegovina, protection became firmly re-established on the international agenda. But more than 60 years since the Geneva Conventions were drafted, protection was failing.

In contemporary situations, civilian protection and forced migration are interconnected in two ways. Firstly, violent conflict has taken on new manifestations. States, which have the legal duty to protect, are either unwilling or unable to do so. Non-state armed actors are increasingly the perpetrators of the violence and conflict that leads to forced migration.

In the case of Libya, NATO's military action was provided to protect civilians, yet massive population displacement was not averted. Conversely, in the case of Syria, international actors have yet to provide protection although far more civilians have been killed by government troops and refugee numbers are rapidly escalating.

Secondly, whereas certain categories of forced migrants - notably refugees - have a special protection status, concern is growing for those fleeing inter-communal and gang violence, disasters, land-grabbing, and development-related resettlement.

A new humanitarianism has emerged that argues that humanitarian actors should address not only daily needs but also the causes of vulnerability, including violence.

A rights-based approach stimulated initiatives to reaffirm international commitments to the protection of civilians and is a focus of UN Security Council deliberations. At the 2005 UN World Summit, the norm of 'Responsibility to Protect' (R2P) was adopted.

In situations not sufficiently covered in legal and political frameworks, complementary or subsidiary protection measures may apply by invoking a range of international conventions.

The practice of offering temporary protection status, invoked to provide safe haven for Hondurans and Nicaraguans after Hurricane Mitch in 1998, is also gaining wider international interest.

While the legal mandates for protection rest with agencies such as the UN refugee agency (UNHCR) and the ICRC, humanitarian organizations now mainstream protection in their response to forced migration and other humanitarian emergencies. The IFRC has focused on these challenges and a significant development was the 2011 adoption of protection principles in the Sphere standards.

It is not the role of NGOs to actually protect people from violence or conflict, but they can enhance protection by measures that remove or reduce the *threat* of violence and conflict. Examples of this approach are enhancing community responsibility, promoting gender awareness, advocating with police and military, and implementing what Oxfam calls “safe programming” - ensuring that aid does not negatively impact on “conflict dynamics”.

Moving out of a war zone is often one of the most effective protection mechanisms. Sanctuary is sought in places where some assistance and security can be found, provided by family relationships, national authorities or humanitarian agencies. Paradoxically, migration can be empowering, even if forced. The humanitarian focus on the ‘right to remain’ needs to be critically examined.

Migration in areas that experience violent conflict or natural hazards often involves high risks and the consequences of displacement can be harmful. Risks may include repeated displacements of women and families undermining protective social networks, conflict over scarce resources, loss of ID papers, and return under less than optimal circumstances.

Support for community self-protection can take place on three levels of intervention, encapsulated by an ICRC model as:

- ‘Responsive action’ to prevent abuse or alleviate its effects
- ‘Remedial action’ to restore people’s dignity after a pattern of abuse
- ‘Environment-building’ to encourage authorities to respect the rights of individuals.

The ultimate protection measure in relation to forced migration is prevention, but it is also the most difficult. Supporting governments to protect their own people while at the same time diminishing a population’s exposure to risk is not easy. Success ultimately depends on the political will of the parties to conflict. Taking international action to prevent atrocities is very difficult. Often violent conflict escalates gradually but cannot be addressed until it reaches the level of large-scale atrocities.

A second question is whether to have a categorical approach. In other words, should the protection needs of the affected population as a whole be taken into account, or should the focus be on mitigating vulnerability for predetermined categories of persons? Should the approach be status-based, rights-based or needs-based?

Community protection strategies are not necessarily always without harmful effects: strategies developed during conflict may become liabilities during peace. Self-protection at times depends on engagement with the actors in a conflict.

This chapter concludes with three practical recommendations for governments, humanitarian organizations and donors.

Firstly, address shrinking protection space. Advocacy and action to address shrinking protection space are urgent as increasing numbers of people are trapped in chronic crisis, endless war, urban vulnerability or environmentally induced livelihood-problems.

Secondly, combine protection with livelihoods. It is possible to determine support based on assessment rather than designating different categories of vulnerable people. Some

humanitarian organizations are already doing this, but recovering people's access to institutions and livelihood options is one of the biggest challenges in protection work.

Thirdly, adapt the ICRC's protection model and move environment-building beyond a national focus to one that addresses providers of protection at local, regional, national and international levels – from clan elders to host governments – in the light of shrinking protection space and increasing vulnerability of forced migrants.

BOX

'Expedited' adoptions: forced migration by another name

In the wake of virtually every humanitarian crisis or major disaster since the Viet Nam war and its notorious 'baby-lift' to the US and Europe, initiatives are devised to move children to - and often adoption in - another country. The list is long, including the armed conflict in Bosnia and Herzegovina (1992), the Rwandan genocide (1994), the Indian Ocean tsunami (2004) and the 2010 earthquake in Haiti.

While many expressed interest in adopting children affected by the tsunami and plans were mooted to airlift children out of Aceh in particular, both the international community and the national authorities respected the principle that "efforts to reunify a displaced child with his or her parents or family members must take priority" and "premature and unregulated attempts to organise the adoption of such a child abroad should be avoided and resisted".

There was considerable optimism that adherence to such an approach was now generally accepted. Unfortunately, the response to the 2010 Haiti earthquake demonstrated how fragile the apparent consensus was.

There were many inter-country adoptions from Haiti at the time of the earthquake, with well over 1,000 children adopted abroad in each of the two preceding years, mainly to Canada, France and the United States. The adoption process was also widely recognized as totally lacking necessary safeguards, and many countries had long ceased processing adoptions from Haiti. Despite this, the process could take up to two years, so at any one time some 2,000 children could be either simply 'identified as adoptable' or legally adopted but awaiting travel documents. That was the position in January 2010.

The great majority of children adopted abroad were not orphans nor even abandoned, but had simply been placed in a crèche, their parents often misled into giving consent for adoption. It could not be said that these children required adoption, or had really been given up for adoption by their parents.

In this context, several governments immediately pressed the overwhelmed Haitian authorities to expedite the transfer of children already with an adoption judgement. But within seven days of the disaster, the US announced that its Humanitarian Parole Program – which eventually moved some 1,200 children to the US – would also include children simply matched with prospective adopters (i.e. expediting adoptions without going through the normal legal processes). Belgium, Canada, France, Germany, Luxemburg, the Netherlands and Switzerland followed suit.

In all, more than 2,300 children were moved abroad for adoption by the end of the year, most under special dispensations. After the trauma of the earthquake, these children were subjected

to the trauma of unnecessary and rapidly implemented forced migration to a totally unfamiliar place without family or known caregivers.

In situations such as these, the onus for ensuring protection falls on the international community and, in particular, on the destination country's authorities.

Expedited transfer may be in the best interests of a child with a pre-existing adoption judgement, but it should be decided on a case-by-case basis and should never take place before the child recovers from initial trauma in a familiar environment.

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