

## **“Precarious lives: Involuntary displacement of people in Asia Pacific today”**

Paper prepared for the ‘Right to Move’ Symposium  
Sophia University, December 2009

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“...The 21st century will be characterised by the mass movement of people being pushed and pulled within and beyond their borders by conflict, calamity or opportunities...”

“...Human mobility is growing in scale, scope and complexity. New patterns of movement are emerging, including forms of displacement and forced migration that are not addressed by international refugee law.”

Antonio Guterres, UN High Commissioner for Refugees

Copenhagen negotiators agreed on one thing at least. Climate related disasters, climate change and environmental degradation increasingly and massively displace people and leave them without protection today. Copenhagen acknowledged that these increasingly frequent crises demand new international agreements. Yet existing refugee protection and international humanitarian regimes catering for mass forced displacement due to poverty, conflict and persecution, are under serious challenge. How can global cooperation for the protection of vulnerable displaced persons be renewed and on what grounds? On what normative or ethical foundations can a renewed framework governing involuntary migration be based?

This paper focuses on the causes and impact of forced displacement in Asia Pacific today and proposes that human security, that is, the security of individuals and communities, be located at the centre of international relations, leading to regional agreements that are ethically, legally, and politically sound.

### **Forced displacement in Asia Pacific: Causes and challenges**

Motives for moving are always mixed. Displacement in Asia Pacific today is caused by conflicts, poverty, inequality, poor governance, and by disasters for which often the preparations have been totally inadequate. Refugees and other migrants often use the same routes, use the same ‘agents’ or smugglers, leave behind the same oppressive human rights situations. All are vulnerable, yet while some might merit treatment under a particular international law treaty, for others no international agreement protects their rights, guides burden sharing or delineates states’ obligations. The frequency, size and shared vulnerability and complexity of these mixed flows urge a realistic review.

People who live precariously outside their places of origin, and whose dignity and human rights are not adequately respected, include the following major categories:

*Refugees*

Every urban centre with an international airport receives refugees from within the region, eg from China (currently especially Uighurs and Tibetans), Burma, West Papua and Vietnam. Asylum seekers also arrive in Asia Pacific from Sri Lanka, Afghanistan, Iraq, and from Somalia, Congo, Sudan and Angola.

#### *Internally Displaced People (IDPs)*

The never-ending oppression in Burma has for decades displaced large numbers within that country. Mindanao in the southern Philippines hosts displaced persons from two intertwined conflicts. IDPs have long presented a dilemma to international humanitarian law because they are nominally under the protection of the government of their own countries.

#### *Increased frequency of natural disasters*

Increasingly displacement of people in Asia Pacific is associated with disasters, some of which result from or are exacerbated by climate change. Cyclones, tsunamis and earthquakes and even mud slides, and the collapse of garbage heaps are frequently intimately connected with unplanned or poorly planned human activity.

#### *Climate change refugees in the Pacific*

Pacific countries already experience the first impact of rising sea levels. Overcrowding is at the tipping point of climate. Organised migration, planned well in advance, appears to be the only solution for Tuvalu and Kiribati. The world faces a new challenge in the potential disappearance of Pacific countries and thus a totally new category of stateless persons.

#### *Stateless persons*

Asia Pacific and Thailand in particular, hosts more than its share of stateless persons. At least 3 of the world's 12 million stateless persons now reside in Thailand.

#### *Undocumented labour migrants at risk*

International labour migration is now a permanent feature of Asian economies. The Asia Pacific region supplies a significant proportion of the world's workers, now and into the future. Our concern is for those who are undocumented, clandestine, uninspected, or unauthorised, because they are often unprotected by law and the most easily exploited. Undocumented labour migration ranges from totally voluntary through to kidnapping and trafficking. The risk of trafficking increases among the vulnerable. Thailand is a hub for much of the illegal migration in the region, and also for the syndicates trafficking in women and children.

Which categories of people make the strongest ethical claims on the solidarity of the family of nations? Matthew Gibney employs the term 'precarious residents' in order to identify a class of people whose country of origin fails to provide their needs and even oppresses them, but who are frequently not classed as refugees. He was writing about Zimbabweans in South Africa, but the term can be applied to Rohingyas and other Burmese refugees in Asia; and many if not all the displaced persons in Asia Pacific described above. These people "possess few social, political or economic rights, are highly vulnerable to deportation, and have little or no option for making secure their immigration status".

Another scholar, Alexander Betts, uses the concepts of ‘vulnerable irregular migrants’ and ‘distress migrants’. Some vulnerable irregular migrants, he argues, have protection needs arising from conditions in their country of origin that are unrelated to conflict or political persecution. These include three broad categories:

- a) People fleeing desperate economic or social distress who are in need of protection but are not Convention refugees
- b) People who flee natural disasters but who have no clear legal status and for whom operational responses are *ad hoc*
- c) People displaced by causes related to environmental degradation or climate change.

Other vulnerable irregular migrants have protection needs arising as a result of movement. They include the following four groups:

- a) Stranded migrants who are caught in transit without means to move onwards or back to their country of origin
- b) Trafficked persons
- c) Victims of trauma and violence in transit whose particular needs may make it inappropriate to simply return to their country of origin
- d) Forcibly expelled migrants who may face violence and human rights abuses in their host states or on return to their country of origin.

The Betts approach doesn’t address regular labour migrants, many of whom remain vulnerable to abuse even though their status and manner of movement may be regular, and he acknowledges that his term would need to acquire more definitional precision as part of the ‘soft law’ approach that he advocates.

### **Seeking a new response**

The visionary ‘Convention Relating to the Status of Refugees’ of 1951, was intended to embrace all those persons in need of international protection because of rupture with their country of origin following World War II. Yet by the mid-1980s the numbers and source countries of asylum seekers arriving in Europe and North America rose significantly, straining commitments made under the Convention. As a result, the preferred international response was to offer temporary protection while working towards political agreements that would halt potential migratory movements and allow repatriation.

If a second paradigm shift was needed by the end of the last century, then *a fortiori* a new conceptual framework is needed in the 21<sup>st</sup> century. Intertwined global crises – economic, financial, energy, food, migration, climate and ecology - along with the numbers of people displaced and countries affected, add new urgency and complexity.

A range of already existing international human rights instruments provide protection measures that complement those of the Refugee Convention, if they are incorporated into domestic law.<sup>1</sup> Even these, however, do not adequately cover all human rights

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<sup>1</sup> They include: Migration for Employment (ILO 97) (1952); Convention Relating to the Status of Stateless Persons (1960); Convention on the Elimination of all Forms of Racial Discrimination (1969); International Covenant on Civil and Political Rights (1976); International Covenant on Economic, Social and Cultural Rights (1976); UN Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They live (1985); International Convention on the Protection of All

needs. Areas which still need new or better agreements among states include the policing of trafficking; care for the rights of people displaced by climate change; protection of internally displaced people; provision of civil rights for *de facto* stateless persons.

Moreover, international agreements are easiest to reach in ad hoc situations and on a regional basis. Both in Latin America and Africa there is an effort to frame regional agreements to face such questions. Although Asia is immense and diverse, many of the existing provisions of international humanitarian organisations can be brought to bear in pragmatic ways if governments agree to cooperate. Such a ‘soft law’ approach is both pragmatic and ethical.

‘Soft law’ is exemplified by the international response to the phenomenon of IDPs. IDPs were first identified as a vulnerable category in 1982. During the late 1980s and 1990s guidelines were developed. Working regionally in a collaborative way, agreements are being reached, often drawing elements and principles from existing international instruments. The recent agreement among 17 countries, signed last October 2009 for an African Union Convention on IDPs, is a good example of this approach. Organisational responsibilities can be assigned when the rights and claims of the displaced on the community of states have been acknowledged.

### **Normative and ethical responses**

The real basis of all human rights is the dignity of the human person. For Cicero the Latin word ‘dignitas’ expressed the Ancient Greek idea that reason uplifts all human beings over the rest of nature. According to him, this special status does not yield rights, but duties: because reason lifts human persons up over animals, we should use reason and not behave like animals.

Our capacity to relate to one another is distinctively human and leads to the notion of a shared good. The 2nd Vatican Council expressed well for our day the time honoured principle of the common good:

Everyday human interdependence grows more tightly drawn ... As a result the common good, that is, the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfilment, today takes on an increasingly universal complexion and consequently involves rights and duties with respect to the whole human race.

Vatican Council II, *Gaudium et Spes*, n 26.

The moral basis for the nation state then lies in its capacity to provide for the dignity and freedom of its citizens and for the human rights of all within its territory. The responsibility to provide protection to refugees, and to all persons who are found to be without the protection of any state, is shared by all sovereign states. When the maintenance of state sovereignty is valued above the protection of human rights, the moral basis of state sovereignty is called into question. Human security, that is, security based on human dignity, is a higher value than state security. International

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Migrant Workers and Their Families (1990); Protocol Against the Smuggling of Migrants by Land, Sea, and Air (2001); Palermo Protocol to the UN Convention against Transnational Organised Crime.

relations arrangements can be assessed in view of the human security they provide for those persons without the protection of a state.

### **Conclusion**

International obligations arise when states of origin or residence are not willing or able adequately to protect the dignity and rights of people on the move. Alongside the increasingly free movement of goods and capital, a global ethic of solidarity is needed which governs the rights of movement of people for the sake of the global common good. The normative personalist moral theory advocated here urges questioning of constructions such as state sovereignty, international security, citizenship, identity, international law, when they do not provide for human security.

Who makes the strongest claims on human solidarity in Asia Pacific today? Those whose dignity and rights are most threatened and least well protected. If the principles of human dignity and of the common good of all are accepted as valid, then protecting the dignity and rights of those at risk becomes the responsibility of all. Organised in a subsidiary way, with each state and region acknowledging and exercising their proper responsibilities and authority, there is a place also for individual alertness and community action. Non government organisations, for example, helpfully identify protection gaps and temporarily fill them while waiting on states to assume their proper responsibilities. Alertness and guidance are needed, as well as clarity about the division of responsibility.

Legally, ethically and politically, 'human security' is rightly at the centre of international relations. The reality of our interconnectedness, more evident today than ever, calls for a far sighted and deep sense of belonging and inclusion grounded in our common human dignity.