Survival Migration: A New Protection Framework

Alexander Betts
University of Oxford
1) **Problem** – ‘survival migration’ and forced displacement

2) **Evidence** – six cases from Sub-Saharan Africa

3) **Implications** – making existing institutions work better
Part 1: A New Challenge

- Forced displacement

- The rise of “neither/nor” situations
  (e.g. Zimbabwe/DRC/Haiti/Iraq/North Korea/Myanmar)

- The limitations of complementary protection
  (i) limited jurisprudence; ii) regional variation; iii) limited economic and social rights)

- Complex interaction of state fragility/livelihoods/environmental change
Survival Migration

Definition:

“Persons who are outside their country of origin because of an existential threat to which they have no access to a domestic remedy or resolution”.

Have rights under international human rights law but may fall outside the scope of the 1951 Convention.
Relationship to Refugees and Migration

Adapted from Trygve G. Nordby, IFRC Special Envoy on Migration, Keynote Speech, High Commissioner’s Dialogue on Protection Challenges, Geneva, 11-12 December 2007:
Part 2: Research Project

- International and national institutional responses

- Three populations in six host countries:
  - Zimbabweans in RSA/Botswana;
  - Congolese from DRC in Angola/Tanzania;
  - Somalis in Kenya/Yemen.

- Explain variation in response
## Protection of Non-Refugee Survival Migrants

<table>
<thead>
<tr>
<th>Case</th>
<th>National Response</th>
<th>Sources of Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>DRC – Angola</td>
<td>Violation</td>
<td>MSF, Church</td>
</tr>
<tr>
<td></td>
<td>-systematic rights violations</td>
<td></td>
</tr>
<tr>
<td>DRC – Tanzania</td>
<td>Paradox</td>
<td>UNHCR</td>
</tr>
<tr>
<td></td>
<td>-de facto protection of long stay survival migrants</td>
<td></td>
</tr>
<tr>
<td>Zimbabwe – South Africa</td>
<td>Ad hoc</td>
<td>MSF, Church, NGOs</td>
</tr>
<tr>
<td></td>
<td>-absence of formal status/lack of economic and social rights</td>
<td></td>
</tr>
<tr>
<td>Zimbabwe – Botswana</td>
<td>Dichotomy</td>
<td>Church</td>
</tr>
<tr>
<td></td>
<td>-refugees/voluntary distinction</td>
<td></td>
</tr>
<tr>
<td>Somalia – Kenya</td>
<td>Prima facie</td>
<td>UNHCR</td>
</tr>
<tr>
<td></td>
<td>-recognition alongside refugees</td>
<td></td>
</tr>
<tr>
<td>Somalia – Yemen</td>
<td>Triage</td>
<td>Some UNHCR</td>
</tr>
<tr>
<td></td>
<td>-shift from prima facie to RSD, leading to exclusion</td>
<td></td>
</tr>
</tbody>
</table>
1) Zimbabweans in RSA – *ad hoc*


- “Most are escaping the economic consequences of the political situation”: famine, hyperinflation, lack of livelihoods.

- 10% successful RSD

- Pre-April 2009: ‘asylum-seeker permits’/self-settlement

Zimbabweans in RSA – *ad hoc*

- Lack of access to assistance
  - Musina:
  - Johannesburg:

  *Ad hoc coalition of actors:*
  - MSF/UNHCR/IOM/SRC/
  - UNICEF/LHR
  - MLA/Save the Children UK

  *Central Methodist Church: 3,400 people*
  - MSF as only international presence;
  - Majority in urban areas.

- Lack of access to status: 6 RROs; detention/deportation
2) Zims in Botswana - *dichotomy*

- 40-100,000 Zimbabweans;
- Only 900 refugees: detention Francistown pending RSD; encampment Dukwe; $285,000/month on deportation
- ‘Little Harare’, Gaborone - lack of material assistance: exploitation, prostitution, lack of health care

“When people become refugees, a number of things kick in automatically. But for these undocumented, perhaps economic migrants, it is not clear that we have any clear policies, structures, or guidelines”. Marcus Betts, UNICEF Deputy Representative
3) Congolese in Angola - violation

- History of livelihoods migration to Angola

- 2003-9: 400,000 deported mainly from Lunda Norte

- Six waves – often linked to elections.

- Systematic human rights violations (e.g. MSF 2007)

<table>
<thead>
<tr>
<th>Period</th>
<th>No.</th>
<th>Place</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dec 2003</td>
<td>20,000</td>
<td>Bandundu; Western Kasai</td>
</tr>
<tr>
<td>Apr 2004</td>
<td>80,000</td>
<td>Bandundu; W. Kasai</td>
</tr>
<tr>
<td>Sept/Oct 2006</td>
<td>230</td>
<td>W. Kasai</td>
</tr>
<tr>
<td>Feb 2007</td>
<td>6000</td>
<td>W. Kasai</td>
</tr>
<tr>
<td>July 2007</td>
<td>33,000</td>
<td>W and E. Kasai; Katanga</td>
</tr>
<tr>
<td>Dec 2008-Oct 2009</td>
<td>160,000</td>
<td>Bandundu; W. Kasai; Bas-Congo</td>
</tr>
</tbody>
</table>
Congoles in Angola - violation

- Limited response in Angola: lack of access
- Limited interest by Kinshasa except 2009
- Protection only by ‘networked actors’ - Church (Caritas); MSF and partners; Red Cross (ICRC).
- Inter-agency missions mainly focused on numbers; little interest UNHCR/OCHA/IOM
4) Congolese in Tanzania - *paradox*

- South Kivu-Kigoma, 80,000 in Nyarugusu, most since 1998.

On the one hand:
- i) Limited generalized conflict; persecution – no successful RSD

On the other hand:
- ii) General acknowledgement that conditions are too poor to return

→ *de facto* protection of survival migrants.
5) Somalis in Kenya – *prima facie*

- Flight from Southern/Central 1991-
- Decision to recognise all fleeing S/C Somalia as refugees on a *prima facie* basis
- Non-refugee survival migrants *de facto* protected.
- Hosted in Dadaab/Eastleigh
- But very poor conditions of assistance/protection
6) Somalis in Yemen - *triage*

- Previously *prima facie* recognition
- Increasing focus of mixed migration across the Gulf of Aden
- Shift to adopt individualised RSD with a view to detaining and deporting non-refugees
Spectrum of Responses

Angola  Botswana  South Africa  Yemen  Tanzania  Kenya

Vacuum  Ad hoc  Stretching
Part 3: Implications

- The rights exist in IHRL but are poorly understood and rarely implemented.

- There is no clear division of international institutional responsibility.

- The IDP ‘Guiding Principles’ offer a useful precedent for addressing these gaps.
a) Normative Framework

- **Option 1:** Work within existing law

- **Option 2:** Soft law framework
  - Consolidation and application of IHRL
  - As IDP Guiding Principles
  - Possibly leading to negotiated regional treaties (e.g. AU)

- **Option 3:** Additional Protocol
b) Institutional Framework

- Clear division of inter-agency responsibility

- Options for coordination:
  Option 1: Inter-agency Standing Committee (IASC)
  Option 2: Single agency responsibility (e.g. a UNHCFM)
  Option 3: Small stream-lined agency (as UNAIDS)
  Option 4: An SRSG with small secretariat to facilitate across agencies

- ‘Guidelines on implementation’ for i) states; ii) international organizations.
State Interests – ‘win-win’

• For Southern host states
  - People will move anyway
  - Clarity over obligations – temporary protection
  - Predictability in institutional responses and support

• For Northern donor states
  - Reduce the need for irregular secondary movement
  - Can work with existing institutions
  - Uphold human rights
A Role for the World Bank?

- Supporting research:
  - Assessing the causes of movement
  - Assessing impacts on host communities
  - Exploring regional externalities and feedbacks

- Supporting host states:
  - Facilitating burden-sharing to support Temporary Protection
  - A development approach to displacement

- Regional dynamics of state fragility:
  - Taking into account regional dynamics and feedbacks
  - Addressing fragility in the context of migration
Conclusions

- Variation in response explained by politics
- Institutional gaps (normative and institutional)
- The development challenge of forced displacement
- The regional dynamics of state fragility
- Further Research
- Next steps...
• Thank you for listening!