

May 2013

Humanitarian responses in the protection gap

Aurélie Ponthieu and Katharine Derderian

Often a combination of factors pushes people to leave their country, and the voluntary character of their departure remains debatable, challenging humanitarians both to meet needs and to adapt to changing categories of forced displacement.

Today, the reality of forced displacement is characterised by mixed flows, restrictive migration policies and increasing connections between economic migration and political flight. As a result, assisting forcibly displaced populations already means intervening in different type of settings: camps, detention centres, transit locations and urban environments, increasingly with challenges for human dignity and access to basic services. At the same time, new vulnerable groups are arriving at the doors of Médecins Sans Frontières' clinics, including victims of human trafficking, environmental disasters or food insecurity. People's main reason for flight is often difficult to identify, yet remains key to the legal status they are deemed to have upon arrival.

While legal categories are often inadequate in the face of complex realities, vulnerabilities remain similar regardless of status. Neither qualifying as refugees nor being voluntary economic migrants, many people on the move face inadequate policies, lack of assistance and abuses of their human rights. In the countries of destination, their situation depends on fluctuating and politically motivated reception policies and the goodwill of international or local organisations and NGOs to assist them. Often, lack of assistance or incoherent policies only aggravate humanitarian needs, leading to a very real 'protection gap' for the people involved and challenges for aid organisations and states. States facing such influxes must adapt migration and refugee policies coherently to avoid increased vulnerability and to uphold people's rights and human dignity.

Recently, MSF has intervened in several situations where significant numbers of forced migrants – who share the same

needs and vulnerabilities, if not the same profile or reason for flight – confront a dire medical and humanitarian situation. Among recent prominent examples are Zimbabweans crossing the border in large numbers to South Africa (2007-13) and Haitians stranded in the Amazon region of Brazil (2011). These two groups reflect some classic economic migration patterns – the search for economic opportunity, a high proportion of male migrants and/or the use of smuggling routes. Yet many of them point to reasons more complex than the simple will to improve their economic situation. While some fled as refugees, the majority fled as a survival strategy from the consequences of state fragility, including massive outbreaks of disease, natural disasters and extreme poverty. In these contexts, people's vulnerability arguably ended up equal to or greater than that of refugees in the same country of destination.

Haitians in Brazil

Brazil has faced an irregular flow of Haitians, with 3,814 people officially entering its Amazonian border with Peru between 2010 and 2012. Most of them had transited through Peru with the help of smugglers after travelling by plane to Panama or Ecuador. If Haitian emigration is hardly a new phenomenon – one out of six Haitians is estimated to live abroad – this was the first time Brazil was confronted with this phenomenon.

In 2011, MSF conducted a survey in the border town of Tabatinga where most Haitians remained stranded. 40% of those surveyed came from regions of Haiti affected by the January 2010 earthquake. Even though 84% declared that unemployment was their main reason to migrate, the earthquake represented

the second motivation (56%). 69% said they had been affected by the earthquake, with 51% having lost their house and 33% members of their family. Insecurity was also mentioned by 41% as a motivation to leave. Even if Haitians would not qualify as *prima facie* refugees, many acknowledged the humanitarian crisis in Haiti and the burden that forced returns would impose on the country in the context of the destruction and displacement caused by the earthquake. In February 2010, OHCHR¹ and UNHCR urged countries to stop returning undocumented migrants to Haiti and to grant them protection on humanitarian grounds, an appeal that was renewed in 2011 and 2012.

Following the UN call in 2010 at the time of the earthquake for temporary protection for Haitian migrants, Brazil regularised some 300 Haitians present on its territory, offering them 'humanitarian visas'. However, the federal authorities failed to define their policy framework as regards Haitian migration, hampering timely responses to new influxes of Haitians at Brazil's borders.

With no clear policy in force and despite the government decision not to count Haitians as refugees, Haitians in Tabatinga had no alternative other than the asylum system to obtain temporary documentation and the right to work and to be able to leave Tabatinga. With the asylum system overwhelmed by new applications, delays in processing them and the extreme isolation of Tabatinga resulted in an alarming increase in migrants' vulnerability and humanitarian needs. Stranded for two to four months in Tabatinga, Haitians remained unemployed, incurring debt to pay for poor, unhygienic housing. According to an MSF survey, a vast majority had only 1m² living space, slept on the floor, had limited access to potable water and sanitation and ate one meal a day provided by the local church. The federal government requested UNHCR not to assist Haitian migrants despite their asylum seeker status while municipal authorities designated the 'Haitian problem' a federal issue. In this context of blatant exclusion, MSF set up a short intervention aimed at improving basic living conditions



© Alessandra Vilas Boas

Stranded Haitians in the border town of Tabatinga, Brazil.

May 2013

and advocated for the local authorities to grant access for Haitians to Brazilian basic services, resulting in complete registration of all migrants in the health care system.

On 13 January 2012, the Brazilian government adopted legislation regularising all Haitians present on its territory and allowing for family reunification. This decision ultimately facilitated legal immigration, with 100 visas per month being granted at the Brazilian Embassy in Haiti.

Zimbabweans in South Africa

In a similar case, some two million Zimbabweans crossed the border to South Africa to flee the consequences of their country's political and economic crisis in the 2000s. While the region has long known different types of labour migration across and within borders, as well as refugee flows, the migration of Zimbabweans in the last decade has been more complex. Food insecurity and the lack of access to basic services such as health care have been important triggers in the migration of Zimbabweans to South Africa. In 2009, Zimbabwe was the most food aid-dependent country in the world, with seven million out of the population of nine million considered food insecure. 15% of the adult population was HIV-positive and 94% of the population unemployed. At the same time, the country faced Africa's worst cholera outbreak in over fifteen years in an epidemic that affected all provinces. Zimbabwe's fragile public service systems were simply unable to cope. People fled these desperate conditions, with no question that their motive was simply to survive.

South Africa initially considered Zimbabweans arriving at its border as voluntary economic migrants. Many people had crossed the border irregularly and remained undocumented due to the lack of access to legal migration channels, refugee status or temporary protection measures. In mass deportations from January to June 2007 the South African authorities repatriated a total of 102,413 undocumented migrants to Zimbabwe. The deportation policy and its

effects pushed Zimbabweans 'underground', where many lived in appalling conditions. This government policy, coupled with a lack of legal status and a dysfunctional asylum procedure, hampered Zimbabweans from accessing health care and other assistance.

In April 2009, at the peak of electoral violence in Zimbabwe, the South African Department of Home Affairs, under heavy pressure from NGOs and human rights groups, offered Zimbabweans a 'special dispensation permit' under the Immigration Act, a moratorium on deportations, a regularisation process and a 90-day entry visa for passport holders. Although this new policy aimed to provide all Zimbabweans with a legal status, acknowledging their protection needs and the unfairness of forced returns, the special dispensation permit was never implemented. As a result, undocumented Zimbabweans turned once again to the asylum system to get access to employment and education. This strategy overburdened the asylum system and South Africa became the country with the highest number of pending asylum applications in the world.

The moratorium on deportations and the complex documentation process for Zimbabweans ended in 2011, once again exposing the vast majority of Zimbabweans to arrest and deportation. Access to asylum procedures became ever more restrictive, with undocumented individuals of all nationalities systematically denied access into the country and turned away, forced to cross clandestinely, so called 'under the bridge'.

'Guma guma' – criminal gangs present along the border – rob migrants of their belongings or sexually assault them; men are often forced to rape women accompanying them, or otherwise face rape themselves. From January 2010 to June 2011, MSF and the Thuthuzela Centre in Musina treated 481 people who were raped or forced to rape when crossing the Limpopo River between South Africa and Zimbabwe. Most victims also faced other types of violence including beating and abduction.²

Partial or temporary solutions

Several factors influenced the humanitarian needs of migrants in these contexts: access to a legal status, respect of human rights and the responsiveness of the asylum or migration regimes toward their specific situation. Each MSF intervention was initially driven by the lack of other responses to these migrants' needs.

State immigration and asylum policies define who is eligible to enter and remain on their territory but these policies are generally based on pre-existing, defined legal frameworks and categories that risk being too rigid in today's world. Given the situation in some countries, in fragile states such as Zimbabwe and Haiti, do populations have any other option than migration? Sadly, the fear of 'pull factors' may influence the provision of assistance and protection status more than the reality of people's needs and vulnerability.

After some time, Brazil and South Africa acknowledged the specificity of the causes of migration from Haiti and Zimbabwe and the need to adapt existing policies. In both cases, the use of asylum channels alone failed to address needs fairly and effectively. While these two countries granted permanent residence or humanitarian visas to foreign individuals in special circumstances, these mechanisms led to politically oriented, ad hoc and thus temporary solutions. Even though Brazil regularised several thousand Haitians in January 2012, this did nothing to resolve the situation of hundreds of later arrivals who face the same substandard living conditions. With continuing difficulties in Haiti, the most vulnerable of Haitian migrants are unlikely to obtain visas in Haiti and will continue to arrive in Brazil over various borders, yet face the same needs.

South Africa's proposed special immigration status for Zimbabweans aimed at providing stay and work permits failed to resolve the situation, mainly due to unclear requirements or applicants not having passports. Since the end of this process, arrests, detention and deportations have resumed in substandard

conditions, during which people face health risks such as interruption in HIV or TB treatment, or exposure to communicable diseases. Today, South Africa faces new mixed flows of vulnerable individuals, including Somalis and Congolese from the war-torn Kivus. Instead of revising its policies in response to forced migration, South Africa is closing its borders, restricting access to international protection, risking *refoulement* and forcing people to enter by irregular and dangerous means.

New emerging concepts like 'survival migration'³ have the merit of defining this category of forced migrants and challenging the adequacy of existing legal frameworks when, as in these cases, state fragility and humanitarian needs create substantial migrations.

MSF's experiences in Brazil, South Africa and elsewhere point to the humanitarian consequences of a protection gap. Ad hoc and temporary state policies have proven inadequate as answers to a continued and durable phenomenon. There is now an urgent need to develop coherent and needs-based mechanisms to adapt asylum and migration policies to displacement as one of the long-term consequences of state fragility. Otherwise, some of the world's most vulnerable people risk remaining caught up in a complex of state fragility, restrictive policies and inadequate assistance – with very real consequences for their health and human dignity.

Aurélie Ponthieu and Katharine Derderian are Humanitarian Advisors at Médecins Sans Frontières. www.msf.org

Aurelie.ponthieu@brussels.msf.org

[Katharine.derderian@brussels.msf.org](http://www.katharine.derderian@brussels.msf.org)

1. The UN Office of the High Commissioner for Human Rights

2. See also 'South Africa's smugglers' borderland' by Tesfalem Araia and Tamlyn Monson, FMR 33 www.fmreview.org/en/FMRpdfs/FMR33/68-69.pdf

3. Survival migration refers to "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". Betts, A 'Survival Migration: a New Protection Framework', *Global Governance*, Vol. 16, No. 3. <http://journals.riener.com/doi/pdf/10.5555/ggov.2010.16.3.361>