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Post-disaster Haitian migration

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Those who left Haiti in the chaotic aftermath of the 2010 earthquake did not generally find the same posture of solidarity and humanitarianism overseas that was apparent in the significant international assistance that followed the disaster.

Haiti has endured over two centuries of complex political strife, successive coups d'état, authoritarian governments and international interventions that have left it with weak institutions, largely unresponsive to the needs of the population. Most Haitians have learned to depend on themselves and develop their own networks of support, not only in the urban and rural areas of the country but also across international borders, as a way to circumvent the vulnerabilities of originating from a fragile state.

When the earthquake hit in January 2010 the capital Port-au-Prince's infrastructure virtually collapsed and the international community responded with significant relief efforts and large donations aimed at reconstructing the country. Yet the thousands who fled the country in search of safety and survival at that time did not generally find similar solidarity and humanitarian response in potential countries of refuge.

To take two examples, France and the US – two major donor countries that are deeply connected to Haiti's past and present – opted not to accept these forced migrants within their borders on the grounds that they did not legally qualify as refugees under the 1951 Refugee Convention. Both of them took precautions to avoid the possibility of a mass migration of Haitians to their territories; the US imposed a naval blockade around its shores and France closed the borders of French Guiana, one of its overseas departments.

Fragility as the main driver

The migration of these Haitians was mainly generated by the fragility of the Haitian state and its consequent inability to secure its citizens' basic subsistence needs, a reality

which was only aggravated by the natural disaster that, in that sense, acted as a trigger – and not as the main driver – for the displacement.

Although the international legal definition of refugees would not cover the post-disaster Haitian migration, the Cartagena Declaration on Refugees of 1984¹ had promoted an expansion of refugee protection in Latin America, recommending the inclusion of those who "have fled their country because their lives, safety 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."

In spite of the non-binding nature of this document, many Latin American countries have applied this broad refugee definition in their national legislation. Brazil was the first country in the region to pass a specific law on refugees in 1977² and included in it the Cartagena Declaration's severe and widespread violations of human rights as one of the legitimate reasons for granting asylum.

As Brazil was also one of the destinations for displaced Haitians after the earthquake, one might expect that its broad national legislation on refugee could have assured Haitians protection and access to refugee status. However, the National Committee for Refugees (Comitê Nacional para Refugiados, CONARE) – the public body designated to determine the granting of refugee status in Brazil – reached the conclusion that the displaced Haitians could not be granted asylum. The reasons for the denial stated that they could not clearly demonstrate the existence of a threat to their lives, security or freedom.

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Although CONARE determined that Haitians could not be granted refugee status, it simultaneously considered that they required some sort of special permit to stay in Brazil owing to the precarious situation they would face if returned to their home country. As a consequence, some Haitians were granted so-called 'humanitarian visas'. Some actors, including UNHCR, hailed this attitude as exemplary, while others, mainly faith-based organisations and human rights NGOs, criticised it for being too timid, not amounting to the same protection as refugee status.

In January 2012, owing to an increase in the number of Haitians arriving, the Brazilian authorities took the initiative to regularise the situation of approximately four thousand Haitians who had already entered the country, while also introducing a quota system for new migrants from Haiti. As a consequence, hundreds of these migrants have found themselves stuck at the border.

What the Brazilian case serves to illustrate is that, even in cases where a broad national and regional definition of the refugee condition exists, obtaining effective protection or achieving durable solutions for those fleeing from fragile states is more difficult and dependent on political will than with 'traditional refugees'. As these migrants do not fit the globally recognised definition of refugees, their claims for rights and protection are more easily subject to the receiving state's sovereign power in deciding who is granted asylum and who is not.

A practical way forward

Even though the post-disaster Haitian migrants theoretically do have rights in a broad human rights and humanitarian interpretation, they are not properly covered by international frameworks for refugee protection in practice. Cases of displacement related to state fragility are not rare at the present time. Given the significant international mobilisation in the relief and reconstruction efforts following the earthquake in Haiti but the less generous stance towards the Haitians who fled the

devastated country, we should seek ways to try to adjust the international community's handling of those displaced from fragile states.

One such way would be to stress the role that these migrants might play when out of the country in improving the situation of their compatriots back home. In that case they can, through the transnational links they create, help ameliorate the situation in their country of origin.

This rationale seems particularly appropriate in the Haitian case as Haiti's economy has been highly dependent on remittances for decades and in these circumstances would allow the displaced to send remittances back to their families.

An effective and low-cost strategy for helping to rebuild a fragile state devastated by a natural disaster might consist in the adoption by receiving countries of a migration policy that recognises those migrants most in need of protection and permits them to enter and be locally integrated. What the receiving countries would be doing is engaging in a complementary assistance approach.

To this end, receiving countries might either adopt broader interpretations of their existing laws on refuge or allow exceptions, creating special programmes or visas for those fleeing fragile states at particularly vulnerable moments. This is not a normative solution but one that appeals to the practices of humanitarianism in a broad sense, an expanded humanitarianism not only committed to sending aid abroad but also to allowing forced migrants in.

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1. Cartagena Declaration on Refugees. Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 1984, agreed upon in the Cold War context of authoritarian regimes and a proliferation of domestic political crises that created millions of refugees in the Latin American region www.unhcr.org/refworld/docid/3ae6b36ec.html

2. Law 9.474/97 of 22 July