

Who else is in the boat, or in the lorry?

Mixed Flows: Trafficking and Forced Migration

Dr Maryanne Loughry RSM

“Mixed flows, or ‘mixed migratory movements’ occur when refugees are included in migratory movements. They use the same routes and means of transport. They employ the services of the same smugglers and they purchase fraudulent documents from the same suppliers. They move along the same routes through the same transit countries and often in the hope of reaching the same countries of destination. In many cases these refugees are joined by other people on the move with specific protection and assistance needs and rights, including victims of trafficking as well as unaccompanied minors and separated children. There is broad consensus that such movements are likely to increase in the years to come.” International Organization for Migration (IOM), 2010¹

Never before have there been as many international migrants and never before have the patterns of migration been as complex and intertwined. People on the move¹, be they trafficked people, asylum seekers, urban refugees, survival migrants or those displaced by disasters, are overwhelming existing protection and assistance mechanisms. It is no longer possible to focus exclusively on particular groups of migrants because to do so is to risk missing a deeper understanding of the causes and consequences facing migrants today. Catholic Church teachings on the pastoral care of migrants have been refreshingly inclusive of people caught up in human mobility and instructive of how to respond to the needs of new categories of forced migrants that are emerging as a response to the challenges of our time.

¹ The Pontifical Council for Migrants and Itinerant People, established in 1970 was tasked specifically with studying and providing pastoral assistance to ‘people on the move’.

Migration today

In the last two decades the number of international migrants has risen rapidly and in 2010 it is estimated that there were 214 million international migrants². It is further estimated that if this trend continues at its present rate there will be 405 million international migrants by 2050³.

Significantly, the proportion of migrants to those who remain at home has stayed consistent throughout this rapid rise. While statistics are difficult to come by, 10-15% of these migrants are thought to be irregular migrants. By definition, irregular migrants are people who, owing to illegal entry or the expiry of their visas, lack legal status in a transit or host country. These 20-25 million people are also known as undocumented or unauthorized migrants. While a relatively low proportion of the total number of international migrants they are frequently the source of much negative media reporting and public perception. Amongst these migrants are victims of trafficking. In 2007 the US Department of State, in its Trafficking in Persons Report, estimated that 800,000 people are trafficked across international borders every year⁴. These trafficked persons then join the estimated 12.3 million adults and children in living in situations of forced labour, bonded labour and forced prostitution⁵ around the world.

The line between regular and irregular migration is a fine one and hence why present day patterns of migration are more complex and intertwined than ever. Many irregular migrants commenced their journey legally but fell into illegality when they lost their job or overstayed their visa. Others thought they were purchasing a legitimate ticket and were duped by traffickers. Still others are pushed out of their home or country because of poverty, persecution or natural disasters. What is clear is that trafficked persons will be found within migration flows because migrants, be they regular or irregular, 'forced' or 'voluntary' or something in between, use the same means of transport, meet at the same border crossings and frequently use the same agents to assist them with their passage. Amongst all of these people on the move are refugees,

asylum seekers, trafficked persons and internally displaced persons. These people have particular protection needs due to the lack of protection given to them by their country of residence.

In 2007, Antonio Guterres, United Nations High Commissioner for Refugees, spoke of the need to find new and innovative ways to deal with the displacement of persons in a century where the number of people who will move will be increasingly more significant: *“The 21st Century is a century of people on the move, some move because they want a better life, a better future for their children. But many unfortunately move because they are forced to flee. They have no alternatives.”*⁶

Different international and non government agencies focus on the needs of these various groups of migrants. Some of these agencies such as United Nations High Commission for Refugees are more effective than others due to their recognition within international law, their history and political status and their financial resources. All struggle in this present era of unprecedented movement to adequately represent and address the needs of each constituency. One of the most vulnerable groups of people on the move today is those who have been trafficked. More recently recognized as a group of concern to the international community, trafficked people frequently fall outside of the concern of different international agencies charged with protecting or at best monitoring the needs of forced migrants and it has only been in recent years that trafficked people have been protected by international instruments⁷. A look at the bigger picture of migration and forced migration is essential for a better understanding of the forces impacting on trafficked people.

Forced migration

Why do those of us interested in trafficked persons need to understand the broader field of migration and forced migration? To begin with it is the very instability of movement, the absence

Who else is in the boat, or in the lorry? Mixed Flows: Trafficking and Forced Migration
Dr Maryanne Loughry RSM
Theological Journal Concilium, 3, 2011.

of traditional family and community supports that heightens the risks of trafficking for all caught up in human mobility. These risks are multiplied exponentially in situations of forced migration or displacement due to the irregular or unregulated nature of the means of migration used by those moving.

In any migration, the family and community networks that potentially protect people are absent or diminished. Migrants, by their very definition are more vulnerable to traffickers than those who stay home and while both regular migrants and irregular migrants are away from these key support networks, irregular migrants are at heightened risk because of the very nature of irregular migration. It is difficult to know with any precision who are today's irregular migrants, where they are living and in what numbers. Fear of apprehension and possible detention or deportation fuels secrecy and abuse. Irregular migrants are reluctant to report when their rights are violated, when their entitlement to a just salary is abused, when their freedom of movement is curtailed and when they are subjected to physical and sexual abuse because they fear apprehension and incarceration from authorities, further abuse from their employers and retribution in their homeland. This is especially so for trafficked persons. Many irregular migrants have entered countries legally but have overstayed their authorized stay. Without appropriate documentation they know they are at risk of being exploited with little recourse to justice.

In the first half of 2010 45,000 irregular migrants were recorded arriving by land in Greece. Greece has now become the main entry country to the EU for irregular arrivals by land...Greece is incapable of handling such new arrivals, with another 46,000 unhandled asylum applications waiting. DRIVE⁸ Newsletter: September-October 2010

The rapid increase in international migration has meant there has also been an increase in irregular migration and this form of migration has also become more complex because of the difficulties in distinguishing the particular needs and rights of the various types of persons caught

up in these irregular flows. Take the example of an unaccompanied minor in a country of transit. At any one time this child could be identified as a street child, an asylum seeker or a child at risk of trafficking and sexual exploitation. Within each conceptualization there are different normative frameworks, policies and legislation, different non Government actors, different rights and entitlements, yet the same child. Frequently there is no dialogue between these 'entities' and little sense as to how frequently competing efforts could complement each other and enhance the rights of the child.

The majority of irregular migrants have moved because of the growing disparity between the global north and the south risking entering a country illegally in the hope of earning an income that will adequately support family members back home through remittances. Some have come with visas and overstayed in the hope of being able to find on-going employment when their previous contracts have concluded.

Responses to Forced Migration

Peak refugee and migration agencies like the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) have struggled to define who is on the move today and who is under their mandate in this new dispensation. Similarly, countries have failed to manage their borders, increasingly responding to increased flows of migrants by using legislation to tighten their migration policies so as to regulate migration and meet fluctuating labour demands⁹. Many countries have also joined with other like-minded countries to develop restrictive regional policies and practices to keep out unwanted migrant arrivals¹⁰. This has led to many people resorting to people smugglers and traffickers to facilitate their movement.

Within the vast category of irregular migrants there are populations that are deemed to have little alternative but to move. These populations are known as forced migrants, a term that refers to the movements of refugees and internally displaced people as well as people displaced by natural and environmental disasters, chemical or nuclear disasters, famine or development projects. In recent times this definition has been expanded to include those also fleeing economic hardship. It is not difficult to see that contemporary forced migration embraces a more changing and complex pattern of people movement than ever before.

Previously those forced to leave their homeland and cross a border for safety would have been called refugees and they would have demonstrated a well-founded fear of persecution because of race, religion, nationality, membership of a particular social group or political opinion¹¹. Once identified as a refugee they would be accorded international protection and become eligible for international assistance, frequently in refugee camps pending a durable solution to their plight. Post World War II and other conflicts that have generated large numbers of refugees, refugees were generally offered resettlement opportunities in a third country. Today there are three durable solutions for refugees: resettlement, local integration and repatriation. The will of countries in recent times to resettle refugees in third countries has diminished. In 2010 the United Nations High Commissioner for Refugees estimated global resettlement needs at 800,000 and resettlement countries provided less than 80,000 places for UNHCR resettlement submissions¹². In 2011 not only are there hundreds of thousands of refugees living in temporary accommodation, with inadequate international protection and without a durable solution, there are also millions of new categories of forced migrants emerging. The new categories of forced migrants not only do not meet the definition of refugee as laid out in the 1951 Refugee Convention, but they also lack the assistance and protection, albeit inadequate, that such

recognition would possibly provide. These populations, as well as those awaiting durable solutions, are particularly vulnerable to the exploitation of traffickers.

New Categories of Forced Migrants

In 2009 UNHCR whose primary population of concern is refugees, asylum seekers and the stateless, reported that there were 43.3 million people who were uprooted. This number included 15.2 million refugees (including 4.7 million Palestinians), 1 million asylum seekers and 27.1 million internally displaced persons¹³. What are not included in the figures of UNHCR are the estimated 20 million people who were uprooted by sudden onset severe weather events in 2008¹⁴. One has only to think of the 2010 floods of Pakistan to appreciate the enormity of such events and the amount of displacement that results from such disasters. The 2007 Intergovernmental Panel on Climate Change (IPCC) fourth assessment report on the impacts, adaptation and vulnerability of climate change stated with a high degree of confidence (8 out of 10 chance) that severe weather events would increase in severity and frequency in the next decades due to climate change¹⁵. Further the report predicted that such increases would result in increased economic and social costs. Only recently has climate induced displacement been placed on the international agenda. These displaced people do not see themselves as refugees¹⁶, nor are they covered by the 1951 definition of refugees yet it is estimated that by 2050 there will be anything between 22 million to 1 billion people who will be displaced due to climate change, two hundred million being the most frequently cited estimate¹⁷. Similarly those fleeing economic hardship are vast in number, difficult to quantify and not recognized by existing forced migration legislation. Betts and Kaytaz recently suggested, when examining the exodus of Zimbabweans to neighboring countries because of the political and economic plight of Zimbabwe, that a new category of forced migrants was emerging and identified them as ‘survival migrants’¹⁸. In the light of the needs of these migrants and the many millions of other, Betts and Kaytaz called for a

review of the legal definition of refugees to reflect the present reality of those who have been forced to flee their homes and countries and who presently have only limited legal protection because they do not meet the present criteria of the 1951 refugee definition.

All migrants have rights under two sets of international instruments, the human rights instruments: ICCPR, ICESCR, CAT, ICERD, CEDAW, CRC, CRPD and ICRMW¹⁹. They also have rights under international labour law including International Labour Organization (ILO) Conventions concerned with the protection of migrant workers: no 97 and 143 and the trafficking and smuggling protocols of the UN Convention against Organized Crime.

It is argued that more protection could be applied to migrants using this existing legislation. What is now evident is that the current protection framework for forced migrants needs to be supplemented to cover the evolving range of forced migrants that have emerged since the 1951 Refugee Convention in Europe post World War II. This Convention no longer addresses the needs of the forced migrant populations who are in need of protection and assistance.

The Catholic Church and Migration

The Catholic Church and its partner organizations have long been concerned with the plight of migrants and refugees. In 1951, at the same time as the United Nations High Commission for Refugees (UNHCR) was being established in response to the vast numbers of refugees following the Second World War, American, Italian and German laity and clergy as well as the Vatican Secretary for Relations with States, Monsignor Montini (the future Pope Paul VI) and Cardinal Joseph Frings of Germany were establishing an international commission of Catholic Bishops Conferences to work with migrants and refugees to be known as the International Catholic Migration Commission (ICMC)²⁰. Like UNHCR, ICMC has been concerned with the needs of refugees and migrants. Refreshingly, the Catholic Church has always embraced a wider

Who else is in the boat, or in the lorry? Mixed Flows: Trafficking and Forced Migration
Dr Maryanne Loughry RSM
Theological Journal Concilium, 3, 2011.

definition of refugee and migrants than the international legal definitions. On 19 March 1970, with the *Motu Proprio Apostolicae Caritatis*, Pope Paul VI established the Pontifical Council for the Pastoral Care of Migrants and Itinerant People. This Council was tasked with studying and providing pastoral care to ‘people on the move’. These people included: migrants, exiles, refugees, displaced people, fishermen and seafarers, air travelers, road transport workers, nomads, circus people, fairground workers, pilgrims and tourists as well as other categories of people who for various reasons are involved in human mobility²¹. While very broad in reference, it is relevant to note that in 1970 trafficked people were not yet identified by the Catholic Church as people of concern.

In 1992 in a Decree: *Refugees: A Challenge of Solidarity*²², promulgated by the Pontifical Council *Cor Unum*, and the Pontifical Council for the Pastoral Care of Migrants and Itinerant People went a step further and applied the expression *de facto refugee to all persons persecuted because of race, religion, membership in social or political groups; to the victims of armed conflicts, erroneous economic policy or natural disasters; and for humanitarian reasons to internally displaced persons, that is civilians who are forcibly uprooted from their homes by the same types of violence as refugees but who do not cross national frontiers*. Again at this point while trafficked people were not yet included by name, arguably they would be amongst the people of concern. A recently published collection of church documents on the Pastoral Care of Migrants reflecting the teaching of the Universal Church as well as the Church in the United States of America, Australia and Asia cited no references to trafficked people in its index²³.

Like many other organizations it has only been in recent times that the Catholic Church has singled out trafficked people within the populations of people on the move. This concern for trafficked person has come into sharper focus in the past decade especially amongst religious

congregations in the United States, the United Kingdom and Australia where congregations have directed their attention and resources towards advocating for the rights and needs of those trafficked or at risk of being trafficked. These efforts are essential, life giving and of the essence of a Gospel response to the needs of the poor and displaced of our times. Consistent with the Catholic Church's concern for the care of all migrants there is a body of knowledge and Church teaching on migration that can inform how best to understand and address the needs of the trafficked. At the same time, with due attention to the complexity of migration, concern for the trafficked can strengthen the Catholic Church's response to emerging categories of migrants who present new challenges and needs.

At a practical level forced migrants are frequently unable to access services that they are entitled to because of fear of detection, incarceration and deportation. In many countries irregular migrants depend on churches and non government agencies for basic assistance and services. These services can play a vital service in identifying irregular migrants with particular needs be they victims of trafficking, asylum seekers eligible for refugee status²⁴ or other people of concern.

Today's challenge when meeting people on the move is to be attentive to and knowledgeable of the many protection needs migrants can present. To know who else is in the boat or the lorry is to be open to and informed about not just the trafficked, but the others who may be in the company of those trafficked as well as those who could be at risk of trafficking in the future.

¹ International Organization for Migration (IOM), World Migration Report 2010. The Future of Migration: Building Capacities for Change. Geneva, IOM, 2010.

² International Organization for Migration (IOM), World Migration Report 2010. The Future of Migration: Building Capacity for Change.

³ International Organization for Migration (IOM), World Migration Report 2010. The Future of Migration: Building Capacity for Change.

⁴ <http://www.dreamcenter.org/new/images/outreach/RescueProject/stats.pdf>, accessed January 27 2011

⁵ US Department of State Trafficking in Persons Report 2010, <http://www.state.gov/documents/organization/142980.pdf>, accessed 27 January, 2011

⁶ Antonio Guterres, United Nations High Commissioner for Refugees, addressing a press conference after the annual meeting of UNHCR's 2007 governing body <http://www.unhcr.org/470651c94.html>, accessed 1 November 2010.

⁷ United Nations Convention against Transnational Organised Crime, U.N. GOAR, 55th Sess., Annex 1, U.N. Doc. A/55/383 (2000); Protocol Against the Smuggling of Migrants by Land, Sea and Air, U.N. GOAR, 55th Sess., Annex 3, U.N. Doc. A/55/383 (2000); Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, G.A. Res. 55/25 U.N. GOAR, 55th Sess., Annex 2, U.N. Doc.A/RES/55/25 (2002)

⁸ DRIVER Referral: a project that aims to initiate and strengthen networking and capacity building among NGOs, local service providers, international and national institutions in Greece, Italy, Malta and Spain by promoting the capacity of stakeholders to identify and refer those in need of protection and vulnerable groups at arrival, to adequate processes and services. www.icmc.net

⁹ For example see the recent tightening of the UK migration policy on skilled migrants <http://www.bbc.co.uk/news/uk-politics-11816979>, accessed 12 December 2010

¹⁰ Israel has recently commenced the building of yet another wall to prevent asylum seekers from Africa entering Israel from Egypt. These asylum seekers had previously attempted to enter Europe by boat. <http://www.bbc.co.uk/news/mobile/world-middle-east-11809957>, accessed 3 January, 2011

¹¹ 1951 Convention Relating to the Status of Refugees, Article 1: Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside of his former habitual residence as a result of such events, is unable or, owing to such fear is unwilling to return to it. <http://www.unhcr.org/3b66c2aa10.html>, accessed November 1st, 2010

¹² United Nations High Commissioner for Refugees, Projected Global Resettlement Needs 2011. Geneva, UNHCR, 2010 <http://www.bbc.co.uk/news/uk-politics-11816979>, accessed 3 January, 2011

¹³ United Nations High Commissioner for Refugees, 2009 Global Trends: Refugees, Asylum Seekers, Returnees, Internally Displaced and Stateless Persons. Geneva: UNHCR <http://www.unhcr.org/4c11f0be9.html>, accessed 1 November, 2010

¹⁴ International Organization for Migration estimate <http://www.iom.int/jahia/Jahia/activities/by-theme/migration-climate-change-environmental-degradation/complex-nexus>, accessed 12 December, 2010

¹⁵ M. L Parry, O.F. Canziani, J.P. Palutikof, P.J. van der Linden & C.E. Hanson (eds) Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, 2007. Cambridge, Cambridge University Press, 2007

¹⁶J. McAdam & M. Loughry, We Aren't Refugees. Inside Story, 2009 <http://inside.org.au/we-arent-refugees/>, accessed 12 December, 2010

¹⁷ International Organization for Migration, Migration, Climate Change and Environmental Degradation

<http://www.iom.int/jahia/Jahia/activities/by-theme/migration-climate-change-environmental-degradation/complex-nexus>, accessed 12 December 2010

¹⁸ A. Betts & E. Kaytaz, National and international responses to the Zimbabwean exodus: implications for the refugee protection regime, Geneva, UNHCR, 2009
<http://www.unhcr.org/4a76fc8a9.html>, accessed 3 January, 2011

¹⁹ ICCPR (International Covenant on Civil and Political Rights, 1966); ICESCR (International Covenant on Economic, Cultural and Social Rights, 1966); CAT (Convention against Torture, and other Cruel Inhuman or Degrading Treatment or Punishment, 1984); ICERD (International Convention on the Elimination of all forms of Racial Discrimination, 1965); CEDAW (Convention on the Elimination of all forms of Discrimination against Women, 1979); CRC (Convention on the Rights of the Child, 1989); CRPD (Convention on the Rights of Persons with Disabilities, 2006); ICRMW (International Convention on the Rights of All Migrant Workers and Members of their Families, 1990)

²⁰ <http://www.icmc.net/history>, accessed 1 November, 2010

²¹ See further details on the historical background to the Pontifical Council for the Pastoral Care of Migrants and Itinerant People on the Vatican website:
http://www.vatican.va/roman_curia/pontifical_councils/migrants/documents/rc_pc_migrants_doc_19960520_profile_en.html, accessed 3, January, 2011

²² Pontifical Council Cor Unum, Refugees: A Challenge to Solidarity, Vatican, 1992
http://www.vatican.va/roman_curia/pontifical_councils/corunum/documents/rc_pc_corunum_doc_25061992_refuges_en.html, accessed 12 December, 2010

²³ F. Baggio & M. Pettina (eds), Caring for Migrants. A Collection of Church Documents on the Pastoral Care of Migrants, Strathfield, St Pauls Publications, 2009

²⁴ International Organization for Migration (IOM), World Migration Report 2010. The Future of Migration: Building Capacity for Change.

Dr Maryanne Loughry RSM
Research Professor
Centre for Human Rights and International Justice and the Graduate School of Social Work,
Boston College, Massachusetts
Associate Director of the Jesuit Refugee Service-Australia
loughry@bc.edu

Address:
Dr Maryanne Loughry RSM, AM
Associate Director
Jesuit Refugee Service Australia
PO Box 522 Kings Cross, NSW
Australia 1340