

Stranded Migrants

BACKGROUND

Growing numbers of people are migrating internationally, following increasingly complex (and sometimes clandestine) migration routes. This poses unique human rights and policy challenges for governments and intergovernmental agencies. Many migrants fall outside of the traditional classifications of “economic migrant,” “refugee,” and “asylum seeker”—definitions used to categorically determine what (if any) assistance or protection can be provided to them. The phenomenon of “mixed migration” has meant that some people fall into and out of such categories throughout the course of their migrations. Of particular concern to Migrant Forum in Asia (MFA) are those referred to as “stranded migrants”—migrants who become “stuck” in the course of their migration, either in transit or host countries.

WHO ARE STRANDED MIGRANTS?

There is no agreed or legal definition for the term “stranded migrant.” Operational definitions put forward by intergovernmental organizations (IGOs) are limiting and provide insufficient clarity on the matter.

- The Global Migration Group defines stranded migrants as those who are “... unable or unwilling to return to their country of origin, cannot regularize their status in the country where they reside, and do not have access to legal migration opportunities that would enable them to move on to another state” (GMG, 2010).
- The International Organization for Migration (IOM) has not clearly defined “stranded migrants,” though it runs a “Stranded Migrant Facility” to provide assistance to “those who find themselves in difficult migratory circumstances for which funding is not readily available...” and “to derive, from the information collected in providing such assistance, a clearer picture of changing trends in irregular migration in order to assist the international community in formulating counter-measures that can be used in the future” (IOM, 2012). Thus, the IOM refers to stranded migrants in a vague context of undocumented migration, implying a connection with immigration status in determining who is stranded (IOM, 2012).

The international community is far from achieving a robust definition of who can be defined as “stranded,” and the current discourse is myopic. Important questions of who stranded migrants are and what international obligations follow from that quasi-definition remain unanswered. Should Sri Lankan asylum seekers intercepted en route to Australia or Canada by boat be included in stranded migrant responses? The same can be asked for migrants

adrift in the Mediterranean Sea, attempting to reach European shores as undocumented migrants. What of migrant workers brought into a country and abandoned by an illegal recruiter, with no knowledge of a community or institutions to turn to for support?

As Box 1 illustrates, migrants become stranded in many different ways, with a range of implications for their legal status and personal safety, security, and wellbeing.

RESPONSES CONFINED TO EMERGENCIES

States and IGOs have, in recent years, operationalized general understandings of “stranded migrants” only in response to critical situations (e.g., emergency evacuations and repatriations).

Despite the necessity of emergency responses, states and international organizations largely fail to interrogate the underlying problems in the recognition of migrants’ human rights that contribute to their vulnerability in such catastrophic situations.

The increasing frequency of scenarios in which migrants can be seen more broadly as stranded is much higher than what is currently considered in the limited scope of conflict or emergency.

Generalized plans for others who might be deemed “stranded” have yet to be adequately considered, calling into question the responsibility of countries of origin, transit, and destination, and pointing to the need for enhanced global cooperation in protecting the rights of migrants.

Box 1: Typology of Stranded Migrants

Stranded due to immigration controls: Destination countries, particularly those of the Global North, are implementing increasingly strict border controls in order to prevent unwanted and irregular migration flows. Such strict controls have not always had the desired effect, often causing the diversion of migration routes, increased reliance on smugglers, as well as increasing costs and risks for migrants. For those migrants who are traveling great distances through transit countries in order to reach their destinations, strict border controls can render them stranded in transit and in border areas while they attempt to cross and/or continue their journeys (Dowd, 2008).

Stranded due to lack of documentation and statelessness: The identity documents of migrants may be confiscated at borders or by recruitment agents, lost in the course of migration, or stolen. In some cases, migrants destroy their own documents in order to make it more difficult for authorities to establish their identities, and thus to deport them. When authorities (either of the country of destination or the country of origin) cannot establish the migrant's identity, the migrant can become de facto stateless—unable to avail of the protection of the country of destination, without the protection of their home countries, and without the documentation needed to move to another country. Similarly, asylum seekers whose claims have been rejected, but who are unable to acquire necessary identity documents/permission from their country of origin to re-enter, are stuck in legal limbo. In such situations migrants are not only stranded, but are also unable to legally reside or work and must rely on informal networks for survival (Dowd, 2008).

Stranded due to a lack of financial resources: It is often very expensive for low-skilled migrants to migrate. Payments to recruitment agents can be quite high, and those who are unable to travel through regular channels often spend considerable amounts on smugglers to assist them in their journeys. Many migrants are in debt to family members, lenders, or recruiters. Irregular migrants on long overland or sea-based journeys sometimes run out of money in transit, becoming stranded in transit countries (where they are unable to regularize their status) until they can amass the resources necessary to continue to their ultimate destinations. In countries of destination, migrant workers who flee from their employers due to abuse or mistreatment or are dismissed from their employment, but who have not earned enough to pay their way home, can also become stranded (Dowd, 2008).

Stranded due to unwillingness to return: There are many reasons why a migrant worker might not see return as an option, even when remaining in the country of transit or destination is untenable and moving to another country is impossible. Reasons can range from the financial imperative to work, even if undocumented, to a fear for personal or familial safety (in the case of failed asylum seekers, in particular), to the need to save face in the case that the migrant feels as though his or her migration undertaking has failed. Especially for those who have made great personal sacrifices to reach their destination, return may, rationally, be an impossible choice. Thus, they are stranded until such time as they can regularize their status or move to another, more hospitable, country (Dowd, 2008).

Stranded due to emergency situations: Migrants very often become stranded in their countries of destination in crisis situations. Wars, uprisings, insurgencies, and natural disasters cause mass displacements, and migrant workers are often rendered invisible in the responses of affected countries. Embassies, foreign missions, and humanitarian organizations are the first responders called upon to assist in ensuring the safety and security of “third country nationals,” either through evacuations to safe locations or through repatriations. Countries that send migrant workers en masse throughout the world often lack the resources necessary to mount large-scale evacuations. In some cases, even embassies and/or consular services are unavailable in the countries to which migrants are deployed; in the Gulf region, this is compounded by the restrictions on the operations of NGOs and national human rights institutions (if they exist at all). Migrants—highly skilled and low-skilled alike—become stranded in such situations while they await assistance (Dowd, 2008).

Stranded due to imprisonment: Migrant workers (especially undocumented migrants) are made particularly vulnerable in encounters with the legal systems of their countries of destination. Whether held in detention due to irregular legal status or charged with a crime, access to legal representation and support can be expensive and difficult to attain. Migrants can be left stranded in foreign prisons for years if they are unable to secure legal support. Among such cases, the most extreme are those of migrants on death row in Gulf countries facing execution until they are able to raise sufficient blood money to allow for a pardon under Sharia law (MFA).

ANALYSIS

Much of the writing and thinking on the issue of stranded migrants has, thus far, been undertaken by those who work with refugees and analyze refugee policy, as asylum seekers often become stranded in their attempts to establish themselves in a safe country (Collyer, 2010; IOM, 2012; UNHCR, 2007). However, migrant worker communities and their advocates are also beginning to look seriously at the issue of strandings. When emergencies unexpectedly arise, they affect documented and undocumented, low-skilled and highly-skilled alike, though economic and immigration status can make a difference to an individual's ability to evacuate or avail of assistance.

RECENT STRANDING CASES IN ASIA

The following cases demonstrate the critical importance of risk assessment and contingency plans prior to deployment.

The scale on which migrants from South and Southeast Asia are deployed to at-risk regions makes this discussion on the protection of their rights and emergency preparedness paramount.

The Arab Spring

In any conflict zone, embassies work to remove their nationals from harm's way; however, the Arab Spring generated a unique set of challenges. With so many migrant workers from the developing world in the region, states with large numbers of their nationals in the affected areas had to work quickly to respond, and likewise had to adapt their responses to different country contexts as the crisis spread across the region. In the context of Libya, it is estimated that 311,770 of the 721,722 civilians who fled the conflict were migrants (IOM, 2011). This group included people from more than 30 countries, including Mali, Bangladesh, Egypt, Somalia, Sudan, Tunisia, Eritrea, and the Philippines.

In Asia, the primary migrant-sending countries (the Philippines, Indonesia, India, Sri Lanka, Nepal, and Bangladesh, among others) were confronted with the challenge of identifying their nationals and determining how many were stranded in the affected areas. The large population of undocumented migrants complicated operations, as embassies and government departments overseeing evacuation procedures had to find ways to enumerate their nationals and connect with migrant

communities on the ground. Also, the question of resource constraints was key, as the scale of the necessary evacuations/repatriations was so significant—no contingency plans were in place to accommodate the domino effect observed throughout the region during the uprisings.

Triple Disaster in Japan

When the earthquake, tsunami, and subsequent nuclear disaster hit Japan in March 2011, about 75,000 (SMJ, 2012) migrants were in the affected area; however, there was little media coverage of this fact. Migrant sending states were, up to that point, preoccupied with evacuations and repatriations from the Middle East and North Africa, and had to quickly divert attention and resources to the immediate threats to the lives of migrant workers in Japan. This required the further stretching of budgets and human resources, and hurried development and implementation of new evacuation plans.

Floods in Bangkok

In November 2011, migrant workers in Thailand were severely affected by the unprecedented flooding that hit Bangkok and its surrounding areas. Migrant workers, most of whom came from Cambodia, Myanmar, and Laos, were excluded from mainstream relief efforts. Thai regulations stipulate that registered migrants must remain in their province of employment—those who left their appointed areas to escape the flood waters were summarily deported. Many deported migrants turned to smugglers to make their way back into Thailand, spending large sums of money and risking their lives in the process. Little has been reported on the efforts of the governments of Cambodia, Myanmar, and Laos to assist their nationals in Thailand.

CRITIQUE

If these recent emergencies have demonstrated anything, it is that assumptions about emergency response mechanisms need to be rethought, and that strategies need to be flexible and expansive enough to be adapted to complex, large-scale, and simultaneous crises. In addition to general emergency preparedness, regional and international cooperation is also fundamental.

POLICY GAPS

As seen in the recent responses to recent stranded migrant cases, it is evident that there are considerable gaps in thinking and planning regarding contingencies for mass repatriations in emergencies. Where evacuation is necessary, it is incumbent on the authorities of all states to assist all vulnerable people, regardless of citizenship or legal status. All people at risk must be moved to an immediately available safe location—e.g., to a safe zone within the affected country or a transit country. Only once the individual is safe should next steps regarding repatriation be decided, in consultation with the migrant.

Commodification of Labour: Deployment without contingency plans

In the major migrant sending countries of South and Southeast Asia, each calendar year begins with government announcements of deployment targets for the year—1 million migrants seems to be the prevailing number, each deemed a national hero for the economic development his/her future remittances will bring. Labour attaché appointments to diplomatic missions in major receiving countries are contingent on the official's ability to open up the foreign labour market to his/her country's workers to meet national deployment targets. With so much energy spent securing the foreign labour market, little is left to ensure the safety, let alone the human and labour rights, of migrant workers in priority destination countries. Sending countries have an obligation to protect their nationals abroad and to view them as human beings, not as mere units of labour.

The long-term dependence of developing economies on low-skilled migrant labour export often comes at the expense of the development of viable (and desirable) work opportunities at home. Center for Migrant Advocacy (Philippines) reports: "What was originally envisioned as a temporary solution to an acute crisis of unemployment and balance of payments deficit in the early 1970s has become a permanent fixture of the Philippine government's employment strategy" (CMA, 2012). Other countries in the region are following the Philippine migrant labour model. Notably, Bangladesh and Sri Lanka are becoming increasingly reliant on labour migration to the Gulf, and deployment from India is also on the rise.

The continual policy emphasis on migrant labour leads to fundamental questions: *How ingrained is labour export as a development strategy? Is this a permanent fixture of the neoliberal economic system, or is it reversible? Is labour migration the inevitable trajectory in a globalized world with significant labour imbalances? If yes, does this call for greater shared responsibility, accountability, and commitment on the part of sending and receiving countries? Do existing global partnerships respond to the considerable risks that migrants take every day, or are they victims a second time around?*

Sending states should not actively encourage labour migration if they cannot guarantee that migrants will be protected in times of crisis. It is incumbent upon states to ensure that they have sufficient resources and capacity to assist their nationals quickly and efficiently if/when necessary. Resources for the development of migrant-centred, rights-based responses and appropriate training for labour attachés and other diplomatic staff should be raised through fees charged to recruitment agencies as part of their corporate social responsibility.

When Asian governments decide to undertake large-scale deployment to volatile regions, officials know they are sending their people to systems in which migrant vulnerability is high, institutions are lacking, redress mechanisms often fail in the delivery of justice, and governments are not democratic. That migrants will be at risk is clear; thus, risk scenarios and contingency plans should be drawn up to cover every conceivable angle. Instead, states put the burden on migrants to know the risks of their destination country, and on NGOs and other institutions to protect them, shirking their responsibilities to their nationals in the process.

Recent gaps in sending state responses illustrate the urgent need for robust rights-based mechanisms:

- A significant shortcoming in evacuations of Nepalis from Libya in 2011 was that there is no Nepali embassy in Libya. In fact, the Nepali embassy in Cairo had been commissioned to support the needs of Nepali migrant workers in 12 different countries, including Libya. According to an article in *The Himalayan Times*, this embassy has only one ambassador and first secretary, sorely lacking the resources to respond under such difficult circumstances (CMA, 2012).
- Plans for the evacuation of nearly 50,000 Bangladeshis from Libya were delayed (BBC, 2011), as the Bangladeshi government lacked the logistical power to carry out an evacuation of this scale.
- Indonesian legislators were late in bringing forward recommendations for a special budget to evacuate Indonesians from the region, which were introduced on March 29, 2011—three months following the start of the crisis.

Prioritizing Assistance to Nationals

In all of the recent emergencies, many people were affected—citizens and non-citizens alike. State responses

tended to be myopic in their scope, considering how to use their resources to provide assistance for their own citizens, regardless of who else might be in need of evacuation or other forms of support. This was largely the case in Thailand, where Thai nationals were the clear focus of relief efforts and migrant workers were largely left to fend for themselves. Human Rights and Development Foundation (Thailand) reports:

Burmese immigrants [were] denied assistance because they could not produce proper documentation were widespread during the 2004 tsunami. Similarly, during the 2011 floods, immigrants who were not in possession of their work permits were often denied access to resources or they themselves were distrustful of officials, fearing arrest if they asked for assistance or went to the local labor office to request a new work permit. The United Nations expressed concern during the 2011 floods, noting immigrants were ‘largely excluded’ from mainstream relief efforts during the crisis (HRDF, 2012).

In the case of the Arab uprising, there was some evidence of cross-national cooperation in evacuations—India assisted in the evacuations of some Sri Lankans and Bangladeshis, the Philippines assisted some Thais and Indonesians; however, on the whole, states favoured the evacuation of their nationals regardless of the many others who may have been in need of assistance and whose states were not so quick to respond due to a lack of attention to the need for risk projections and contingency plans for emergencies.

In addition to the responsibility of migrant sending and receiving countries, the duties of countries of the Global North must also be called into question. During the Arab crisis, developed countries, for the most part, assisted by providing funds to implement evacuation procedures. While evacuating their own citizens, few of these countries offered assistance to other migrants. Images in the media of thousands of migrants lined up at ports, awaiting evacuation assistance, call into question the responsibility of countries with considerably more resources—where were they, and why didn’t they assist?

PROBLEMS IN ACCESS TO ASSISTANCE

Getting the Numbers Right

The ability of a migrant worker to avail of assistance, offered by states or other organizations, is influenced by his/her legal status and, often, by available financial resources. A harsh reality hampering many evacuation efforts from the Middle East and from Japan was the lack of reliable data on the real numbers of migrant workers in those countries. For example, in 2011 the government of Nepal had on record ~15,000 Nepalis living and working in Bahrain, but estimated that there were between 30,000 to

35,000 actually in the country (Republica, 2011). Such massive gaps in information are common, and negatively affect the ability of states to properly plan and budget for large-scale evacuations. It also makes it exceedingly difficult for states to locate their citizens, and to provide them with the information they need to avail of assistance.

Preferential Treatment for the Highly Skilled

It is equally important to note that those in more stable employment situations (e.g., highly-skilled workers, those employed by larger companies or corporations) and those with more financial resources at their disposal are almost always in a much better position to access assistance and/or to plan their own evacuations. During the crises in Libya and Egypt, many countries advised their nationals to travel to specific border check-points from which evacuations would be facilitated. Many were able to rely on their employers for assistance; however, migrant domestic workers, undocumented workers, and those with few financial resources and little support from their employers were less likely to be in a position to travel safely (and some were not able to travel at all).

Fear and Intimidation

In addition, undocumented migrants may choose not to avail of assistance for fear of detention or deportation. Truckloads of Cambodian, Laotian, and Burmese migrant evacuees in Thailand were deported in their attempts to flee the floods. Such practices obstruct the ability of undocumented workers to reach safety, and deter them from requesting assistance when it is needed.

Employer Tied Visas

The Kafala System and its variants, widely imposed for migrant workers in the Gulf, require that migrant workers receive an exit clearance from the immigration authorities of the host country, with the consent of the employer, before they are allowed to leave the country. Even in cases of emergency, if the employer fails to release the migrant worker from his/her service, the migrant worker can be prevented from evacuating. Embassies of the countries of origin have little power to intervene in such cases. Even recent measures to reform the Kafala system have not been able to fully address its systemic failures, as evidenced in cases in which migrants become stranded.

Lack of Gender-Responsive Assistance

In many countries of the Gulf, shelters run by migrant communities and/or embassies are often set up exclusively for women, with fewer avenues available for men who require similar support. Thus, in situations of stranding, men are often unable to access shelters, even temporarily, and must rely on the goodwill of their employers or other community contacts.

Women migrants in the Gulf are often employed as domestic workers, and are therefore housed and employed in the homes of their employers. To varying degrees depending on the country and the whims of their employers, their mobility can be highly restricted at the best of times. In times of emergency, these mobility restrictions and a lack of consideration of the specific needs of domestic workers can prevent migrant women from accessing assistance offered by their embassies or other international organizations.

Resistance to Repatriation

In the rush to evacuate their nationals from the Middle East, states demonstrated insufficient sensitivity to the anxieties of those migrants (particularly undocumented migrant workers) who were afraid that choosing to leave the country might mean that they would never be able to return. Some chose to risk their lives to remain in insecure locations, while others attempted to evacuate but took extraordinary lengths to avoid repatriation.

Among the many who died during the evacuations were three Bangladeshi men who tragically drowned after jumping from their ferry in an attempt to swim to the island of Crete (Kitstantonis & Knowlton, 2011) to avoid repatriation. This speaks to the desperation of many stranded migrants in the region. Fears of returning to debt, unemployment, and poverty led some migrants to remain in volatile and unsafe conditions, or to risk their lives in their attempts to secure a better life.

The IOM's Stranded Migrant Facility, while offering much needed assistance to many, is almost exclusively focused on repatriation. As Dowd notes: "Assistance is generally limited to providing a plane ticket home, as the program has been set up to find solutions, rather than offer protection" (Dowd, 2008). While it is obviously the case that moving migrants to safe locations is paramount in emergencies, repatriation may not be a viable choice for some migrants. It is necessary to develop migrant-sensitive, rights-based responses.

LACK OF RETURN / REINTEGRATION SUPPORT

While sending states have, to varying degrees, implemented support systems for their out-going migrants, none have robust programs in place to support returning migrants with their reintegration. This gap is even more acute for large-scale returns. Migrants repatriated following evacuation from conflict zones or other disasters face multiple challenges on arrival. In addition to potential emotional trauma, they are likely facing unemployment upon their return.

The Philippine Government took steps to assist returnees from Libya, working with recruitment agencies to prioritize the allocation of new placements in secure countries for them, as well as opening up skills development training

for these workers (Manila Bulletin). These returnees were also given PHP 10,000 (approximately USD 230) each on arrival to assist with their reintegration. The same was not extended to workers returning from Syria or Egypt (CMA, 2012).

Measures taken do not seem to respond to the personal and psychosocial needs of people forcefully repatriated. Solutions are primarily focused on ensuring the continued economic activity of the migrant worker.

Center for Migrant Advocacy (Philippines) asks "whether or not giving PHP 10,000 is sufficient to lead to any significant change in patterns of migration" and suggests that the Philippine Government "... should be more forward-looking in their approach to reintegration, supporting economic activities that can be sustained and offering more support and guidance in setting up businesses" (CMA, 2012). Similar questions can be raised of other countries in the region: what support, apart from evacuation, is considered to assist returning migrants with their reintegration?

RECOMMENDATIONS

In considering new approaches for migrant-centred responses to stranded migrant cases, the following recommendations should be considered:

- Rather than coordinating emergency responses on an ad hoc basis, a **coordinated, migrant-centred, and rights-based approach** would facilitate the efficient evacuation of stranded migrants, regardless of nationality, from centres of crisis through collaborations between governments (sending, receiving, and transit countries), international agencies, and humanitarian organizations. **Comprehensive contingency plans should be developed well in advance for “at-risk” areas.**
- Advance work should be undertaken to **ascertain the numbers of migrants in “at risk” regions** (documented and undocumented) in order to streamline emergency operations. Outreach to migrant communities to identify locations and numbers of migrants should be undertaken, and information sharing among states on these numbers should be facilitated.
- Countries of origin should set up **emergency task forces** with specific protocols to be enacted when emergencies occur. Such a task force would be responsible for coordinating with host country officials, neighbouring governments, and migrant communities to ensure a swift and appropriate response to prevent migrants from becoming stranded.
- Assistance to migrants evacuating from emergency zones **should not be contingent on legal status**, and migrant evacuees should never be subject to detention or deportation.
- In countries in which the Kafala System is in place, **emergency exit permits** that do not require the consent of the employer should be provided in cases of emergency to allow for the evacuation of those who wish to leave.
- Embassies and migrant community support organizations should consider opening shelters for men as well as women, in order to provide assistance to all community members when needed. **Gender-sensitive responses** to emergency situations should be developed and pursued.
- It is imperative that migrant sending states create **comprehensive plans to assist all migrant returnees with their reintegration**—i.e., access to good employment opportunities and/or the means to up-skill. Emergency evacuation plans must also include plans for reintegration of large influxes of migrant workers, and appropriate resources should be allocated for such contingencies.
- **Alternatives to voluntary repatriation** in emergency situations should be explored (e.g., safe zones, temporary evacuations to neighbouring countries), and information should be provided to migrants of all options. For those migrants who wish to re-migrate following evacuation, support should be extended to help them identify regular and safe migration channels.
- Migrant sending **states should reconsider their heavy reliance on such precarious work arrangements**, and should prioritize the development of their national economies to provide secure work opportunities for their nationals at home.

In sum, a coordinated and migrant-centred, rights-based approach, combined with sensitivity to the need for alternatives to repatriation and strong reintegration programs, would go a long way to ensuring that fewer migrants become stranded in dangerous and life-threatening situations.

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