

# **A long and winding road**

## **Background Paper**

### **Regional Conference on Refugee Protection and International Migration: Mixed Movements and Irregular Migration from the East and Horn of Africa and Great Lakes Region to Southern Africa**

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## **Introduction**

This paper is intended to facilitate a constructive discussion amongst states and other stakeholders with respect to the mixed movement of people that is currently taking place between the East and Horn of Africa and the Great Lakes region to the southern part of the continent.

Stretching all the way from Eritrea, Ethiopia and Somalia to South Africa's Atlantic coast, growing numbers of people are travelling the whole or part of this complex 4,500 kilometre route, travelling overland, by sea and (much less commonly) by air. It is a difficult and dangerous journey that imposes a great deal of hardship on the people concerned and which exposes them to a variety of human rights and protection risks. At the same time, this mixed movement, much of which is irregular in nature and organized by human smugglers, is of growing concern to states, who regard it as a violation of their national laws as well as a threat to their sovereignty, security and economy.

For IOM and UNHCR, the mixed movement to Southern Africa also constitutes a significant challenge to their respective roles. It is in many ways the antithesis of the type of movement that IOM seeks to promote and facilitate: namely that which is safe, regular, orderly and humanely managed. In addition, the movement, as well as the way that states have responded to it, is making it more difficult for UNHCR to attain its objective of finding protection and solutions for refugees and upholding the rights of asylum seekers.

This paper opens with a global perspective on these issues, defining the notion of mixed movements and explaining why in recent years it has attracted growing attention from the international community. The paper then goes on to provide an account of the mixed movements that are currently taking place to and within Southern Africa. The following part of the paper identifies some of the key policy and operational issues arising from this phenomenon, while the final section examines some recent approaches and initiatives that have been taken in relation to this matter.

## **The global context**

In the past decade, states and international organizations, including IOM and UNHCR, have become increasingly concerned with the need to address the issue of mixed movements. Mixed movements are, according to IOM, "complex population movements including refugees, asylum seekers, economic migrants and other migrants" (IOM 2009a).

In a mixed movement, these people may travel with or alongside each other, using the same routes and means of transport but with different motivations and objectives. According to UNHCR, such movements often involve irregular or clandestine travel, "exposing people to exploitation and abuse by smugglers and traffickers or placing their lives at risk. Most migrants, when they travel irregularly, are in vulnerable situations" (UNHCR 2009a).

As the latter statement suggests, mixed movements raise a number of important

human rights and protection challenges. One of the most significant of those challenges is to ensure that those people who have a claim to refugee status are given the opportunity to seek asylum and are able to benefit from the protection that this status affords, including protection against refoulement (i.e. involuntary return to a country where their life or liberty would be at risk).

Mixed migratory movements often involve people who, while not having a valid claim to refugee status, nevertheless find themselves in situations of vulnerability and at risk of human rights violations. Some have felt obliged to leave their own country as a result of governance and development failures. Some have developed protection and humanitarian needs as a result of abuses suffered in the course of their journey, often at the hands of smugglers, traffickers and unscrupulous employers. Others have been subject to harsh forms of detention, relocation or deportation as a result of their irregular status. A proportion of these people have specific needs: unaccompanied and separated children, single women, the elderly and infirm, and victims of trafficking, for example.

Many of the people involved in mixed movements do not belong to an established legal category for which specific protection arrangements have been established. Even so, all migrants – including irregular migrants – are entitled to the exercise of their human rights, regardless of their status.

The phenomenon of mixed movements has also prompted a growing recognition of the fact that a single individual may be motivated to leave his or her country by a variety of different economic, social, political and personal considerations. According to one analysis, “often poverty, inequality and conflict co-exist . . . those who flee a country where conflict, persecution and discrimination are rife, for example, may also be trying to escape dire economic circumstances” (Van Hear et al 2009: 1).

The need to develop an international strategy in order to combat both the human security and state security challenges posed by mixed movements has been recognized for at least a decade. In 2000, for example, joint papers drafted by UNHCR, IOM and International Labour Organization (ILO) considered the policy and protection implications of the ‘migration-asylum nexus’ (UNHCR 2001; Van Hear et al 2009 6-7).<sup>1</sup> Most recently, international efforts to address the dilemmas posed by mixed movements have gathered further pace.

In June 2006, UNHCR introduced a “10-Point Plan of Action” on refugee protection and mixed movements, which set out the key issues that should be addressed in such situations (UNHCR 2007). IOM promotes a comprehensive approach to mixed migration flows, within the broad context of migration management, with the aim of meeting the varying protection, assistance and services needs of individuals and different groups of migrants (IOM 2009 and 2009).

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1 In 2008, UNHCR moved away from using this term, arguing that it had become too closely associated with the migration control agenda of the industrialized states. An alternative concept, ‘refugee protection and international migration’ was introduced to replace it. See (Crisp 2008).

## Recent research

There has been a growing recognition of the need to develop a collaborative international response to mixed movements from the East and Horn of Africa and the Great Lakes region to the southern part of the continent, based on an understanding that the region's refugee protection and migration management systems have not always been able to respond consistently and adequately to this phenomenon.

A number of national, bilateral and regional initiatives have already been established by states and international organizations in order to address this issue. Some of these initiatives have also produced detailed research findings regarding the nature, scope and dynamics of mixed movements in the region, as well as important insights with respect to the difficult challenges that the international community faces in responding to such movements.

IOM published one of the earliest studies of trafficking in the Southern African region in 2003, focusing on the trade in women and children for sexual exploitation (Martens et al. 2003). This was followed in 2009 by one of the most comprehensive studies on trafficking to date, which detailed the irregular movement of men from the East and Horn of Africa to Southern Africa, titled "In Pursuit of the Southern Dream" (IOM 2009b).

Another important document is the April 2008 Report of the Tanzanian Ministerial Task Force on Irregular Migration into and through Tanzania (TMTF 2008), which focuses on the particular challenges confronting Tanzania as a transit country for people on their way to Southern Africa. UNHCR has also recently completed a review of mixed-movement challenges and UNHCR's response to them in Malawi, Mozambique and South Africa (Crisp and Kiragu 2010).

Academic researchers have made an important contribution to the debate on mixed movement in the region. Members of the Forced Migration Studies Programme (FMSP) at Witwatersrand University in Johannesburg, for example, have produced numerous studies on the issue, focusing particularly but not exclusively on the estimated 1.5 million Zimbabweans who have moved to South Africa.<sup>2</sup> The findings underline the strain that this massive influx has placed on the country's asylum and border management system (Amit et al. 2009; Amit 2010a).

Despite such enquiries and with few exceptions, there is still a shortage of accurate and timely data on the mixed movements examined in this paper. This is in part a reflection of the fact that the mixed-movement policy debate (and consequently research funding) has in recent years been dominated by Europe's concern about the arrival of irregular migrants through the Mediterranean region. The issues of irregular and mixed movements in developing regions have been subject to much less scrutiny. Thus one recent study suggested that "the quality of data available in Malawi, Mozambique and Zambia appears too poor to reliably assess the scale of migration

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2 The exact number of Zimbabwean migrants is a question of some controversy, with some commentators claiming there may be 3 million. However, FMSP has repeatedly and persuasively argued that there are likely to be a maximum of 1.5 million Zimbabweans in South Africa (Polzer in News 24, 2009)

flows in [these] countries” (Kiwanuka and Monson 2009: 7).

Of particular concern is the dearth of information available concerning the nature and scope of migratory movements from the Great Lakes region. The International Migration Institute (IMI) at the University of Oxford, in partnership with the University of Lubumbashi in the Democratic Republic of the Congo (DRC) is currently researching Congolese migration, but only preliminary findings are available so far.<sup>3</sup>

### **The historical context**

Migration has long been an integral feature of society and the economy in the region that stretches from Eritrea to South Africa. While those patterns of migration pre-date the colonial period, the era of European rule was significant because it established new and artificial borders that cut across established communities, clans and ethnic groups. The colonial era also witnessed the introduction of large-scale commercial enterprises, particularly mining and farming, that required a cheap, flexible and often migrant labour force in order to generate the high profit margins demanded by their managers and shareholders.

By 1970, when most African states had attained independence, there continued to be large numbers of male labour migrants in the South African mines, coming from as far north as Tanzania. Mining centres in Namibia, Tanzania, Zambia and Zimbabwe were also centres of labour migration. Similarly, the commercial farming industry in Southern Africa has long depended on labour migration, often seasonal, circular and informal in nature. The restructuring of the region’s mining industries in the 1990s and the end of the apartheid regime in South Africa changed the pattern of labour migration, reducing the opportunities for contracted and regularized work. But these developments did not reduce the region’s reliance on migration.

Indeed, migration continues to be an important livelihood strategy for many low-income households and also remains critical to the continued viability and profitability of many businesses. As Crush concluded in 2005, “systems of labour migration are deeply entrenched in Southern Africa. Governments can and have tried to do away with the system . . . [but] stopping legal migration leads to increased illegal migration” (Crush et al: 5).

The “deeply entrenched” nature of these movements remains a very pertinent consideration. In the Horn of Africa, for example, levels of human security remain generally low, prompting significant numbers of people to consider leaving their community and country, while mass media has made the wealth and opportunities that exist abroad more visible. Technology and transnational networks have also prompted and facilitated the movement of people across international borders.

Alongside this long history of labour migration is the more recent phenomenon of refugee flight and protection. During the liberation struggles in countries such as

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3 One exception is Jonny Steinberg's literature survey “A Mixed Reception: Mozambican and Congolese Refugees in South Africa” (2005).

Angola, Mozambique Namibia, South Africa and Zimbabwe, large numbers of refugees were hosted by neighbouring and nearby states. The post-independence civil wars in Angola and Mozambique also witnessed massive refugee outflows. By the end of the Mozambican civil war, some 1.7 million refugees were being hosted by neighbouring southern African countries, over one million of them in Malawi alone. When peace was restored to Angola in 2002, nearly 500,000 refugees from that country were to be found in the Republic of the Congo, DRC, Namibia and Zambia.

Eastern Africa has a similarly significant record of refugee movements. Tanzania, for example, has hosted successive waves of refugees from countries such as Burundi, DRC, Mozambique and Rwanda, with their number reaching 750,000 at certain points in time. Kenya currently hosts a massive and still-growing population of refugees from Somalia (around 300,000) as well as a much smaller number from southern Sudan.

In the Great Lakes region, large numbers of refugees from Burundi, DRC and Rwanda have been engaging in a highly complex pattern of flight and return throughout the past two decades. And in the Horn of Africa, all the countries concerned – Djibouti, Eritrea, Ethiopia and Somalia – have produced and/or hosted large numbers of refugees in the recent past.

In the region examined in this paper, therefore, mobility is an important survival and poverty-reduction strategy for large (and potentially growing) numbers of people. For governments and international organizations, this situation presents a range of challenges and opportunities: to use migration as a regional development tool; to promote the rights of migrants; to address the issue of irregular migration; and to counter the activities of criminal networks engaged in human smuggling and trafficking.

### **The legal context**

The rights of refugees and migrants – and the duty of states to respect those rights – are codified in a number of international legal instruments.

Some of the people involved in mixed movements to Southern Africa are considered to be refugees under the 1951 UN Refugee Convention and 1969 OAU Refugee Convention. These instruments define a refugee as someone who is obliged to remain outside of their country of origin due to a well-founded fear of persecution, or as a result of external aggression, occupation, foreign domination or events seriously disturbing public order in their state of origin. Mixed movements also include people who have been recognized as refugees in a country of first asylum, but who have moved on to another state in order to access better protection and solutions, and/or improved livelihoods and family reunion opportunities.

States have recognized the vulnerability and risks to migrants working abroad, and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) provides a framework for ensuring that their rights are respected. These specific protections are reinforced by the broader body of international human rights law, which applies to all migrants (and refugees),

irrespective of their status or mode of travel. Instruments such as the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the African Charter on Human and People's Rights, provide additional protection to specific categories of people who are involved in mixed movements.

Many other international instruments are relevant when considering the movement of people who are smuggled or trafficked. These include the two 'Palermo Protocols' of 2000, i.e., the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (The Trafficking Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (The Smuggling Protocol).

While many of the states included in the scope of this paper are parties to the key international instruments outlined above, it must be acknowledged that the provisions of those instruments are not always implemented or respected in practice. Many states lack the capacity, including the financial and technical resources, required to exercise the protective responsibilities that they have assumed.

In some instances, the political will to do so is also lacking. An important issue for the region is thus to consider how to promote the ratification of relevant legal instruments, encourage the lifting of existing reservations to them and address the disconnect that sometimes exists between law, policy and practice.

### **Scope and dynamics of mixed movement**

The extent of mixed and irregular movement to Southern Africa is extremely and inherently difficult to quantify. Those figures that do exist consequently have a limited degree of accuracy.

IOM has estimated that at least 17,000-20,000 men are smuggled from the East and Horn of Africa to Southern Africa every year, based on an assumption that 60 per cent of Ethiopians and 80 per cent of Somalis who move south pass through the Dzaleka refugee camp in Malawi (IOM 2009b). A 2003 report by IOM estimated that 1,000 children and women were trafficked from Mozambique to South Africa every year for the purpose of exploitative labour and commercial sex work, a figure that is still used as a basis for policy discussions (Martens et al. 2003; IRIN 2010a).

A similar difficulty confronts any attempt to understand the scale of mixed movements to countries of destination. In South Africa, for example, the debate over the number of undocumented arrivals has seen estimates grow "from the barely plausible to the outrageous" (Crush et al 2005: 12), with some media reports claiming that there may be as many as 9.84 million irregular migrants in South Africa! The Human Sciences Research Council has arrived at a figure of 4.1 million, but other researchers have argued that this figure is still an overestimate (Crush et al. 2005; News 24 2009).

The following overview looks at the dynamics of mixed movements in source countries, countries of transit and countries of destination. However, it is important to stress that these categories are not discrete but overlapping, and that some locations

may be simultaneously be places of origin, transit and destination. Some transit countries – such as Kenya and Mozambique – are also migrant destinations. Some source countries – including Burundi and the DRC – are also used as transit countries by smugglers moving people from the Horn of Africa.

Destination countries may also be transit countries, as is the case with people who move on from South Africa to extra-regional destinations in Europe, North America or Australia. It is also likely that the objectives of some refugees, asylum seekers and migrants change in the process of their journey. A refugee originally intending to travel to South Africa, for example, may decide to stay and seek asylum and remain in Malawi or Mozambique, or may eventually decide to move onwards in an irregular manner, sometimes by means of smuggling networks.

## **Countries of origin**

### *The Horn of Africa*

According to UNHCR, Somalia “remains one of the most insecure places in the world, with an unprecedented humanitarian crisis” (UNHCR 2010a). In particular, escalating fighting in the past year between the Transitional Federal Government and Islamist insurgents Al-Shabaab and Hizbul Islam in southern and central Somalia has exacerbated internal displacement and refugee flight. The areas of Puntland and Somaliland are relatively calm in comparison, but are now affected by mixed movements of people from Somalia and other countries in the region, heading in general to Yemen, across the Gulf of Aden.

Somalis leave their country for a variety of reasons, the primary and most obvious of them being to avoid the generalized violence and serious human rights violations that currently afflict the southern and central parts of the country. They also move to escape from specific and personal persecutory threats as a result of their political affiliation, clan membership and gender, to evade forced conscription or because the war has prevented them from having access to basic needs such as food, medical services, healthcare and livelihoods.

Most Somali refugees cross first from Somalia into Kenya, where the overwhelming majority are hosted in crowded conditions in the Dadaab refugee camps. Some move, either via Dadaab or directly, to the Kenyan capital of Nairobi, where there is a large Somali community and where it is possible to save or borrow enough money to pay for an onward journey, usually through Tanzania, Malawi and Mozambique. Economic, educational and family considerations play a significant role in shaping the southward movement of Somalis, even if the initial trigger for movement is to escape from violence.

The movement of people from Eritrea and Ethiopia would appear to more complex in nature. On the one hand, these countries are not affected by the kind of violence and displacement that currently characterizes Somalia. There is also evidence that in Ethiopia, young men in poor rural areas are actively targeted by smuggling networks, lured by the promise of better livelihoods opportunities in South Africa. On the other hand, UNHCR statistics demonstrate that significant numbers of Eritrean and



Ethiopian refugees are still to be found in neighbouring countries and further a field. Among the Somalis and Ethiopians who reach South Africa, an estimated fifty percent continue their journey onward to destinations beyond the African continent (IOM 2009). The southward flow from the Horn of Africa, of course, is only part of the picture. Others head north, while many move east across the Gulf of Aden to Yemen. Available statistics from the Mixed Migration Task Force<sup>4</sup> indicate that in 2008, more than 50,000 people made the perilous voyage in smugglers' boats. At least 590 drowned and another 359 were reported missing along the different East Africa migration routes.

### *The Great Lakes region*

Mixed movements from the Great Lakes region are to date poorly documented. The cycle of violence in the DRC since the mid-1990s has generated large numbers of refugees and asylum seekers. Tanzania, Uganda, Rwanda and Burundi all host sizeable Congolese refugee populations (approximately 60,000 each in Tanzania, Uganda and Rwanda, and over 20,000 in Burundi).

Although the 2006 elections in the DRC, following the peace agreement that brought the second Congolese war to an end, have brought relative stability to some areas of the country, other regions continue to suffer from violence and displacement. Attacks by the Lord's Resistance Army in north-eastern DRC, complex conflicts related to identity, ethnicity and nationality, as well as rising levels of sexual violence in the Kivus, have exacerbated the humanitarian crisis in that country. There is a concern that the lack of protection experienced by many Congolese citizens may be perpetuated and reinforced by a possible withdrawal of MONUSCO forces in 2011.

Since the 1990s, there has been a considerable growth in the movement of people from the DRC to South Africa. It is estimated that there are currently around 30-40,000 Congolese in South Africa and many, particularly those from eastern DRC (the Kivus) have strong claims to refugee status. Some Congolese, including those who leave the DRC for refugee-related reasons, also leave with the aim of finding better employment and educational opportunities.

These factors have influenced the demographic composition of the movement from the DRC to South Africa, with one study suggesting that "forced migration to South Africa from the DRC appears to be a predominantly young, urban, male and middle-class phenomenon" (Steinberg 2005: iv).

The DRC's long and porous border (with nine other states) also plays a role in shaping the contours of Congolese movement. Temporary and seasonal movements to Angola (to work in diamond mining areas), as well as to Burundi and Rwanda, reflect both long-standing migrant labour patterns and the dynamics of forced displacement.

With regard to Burundi and Rwanda, levels of displacement have diminished significantly in recent years. Even so, both countries continue to be affected by

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<sup>4</sup> The Mixed Migration Task Force (MMTF) was formed in 2007 to address the needs of migrants, refugees and asylum seekers crossing the Gulf of Aden. The Task Force members include the Danish Refugee Council (DRC), Norwegian Refugee Council (NRC), IOM, UNHCHR, UNHCR, UNICEF and UNOCHA.

refugee movements. At the end of 2009, UNHCR counted 287,000 Burundian refugees worldwide, the largest number in Tanzania, where more than 160,000 members of the '1972 caseload' have now become naturalized Tanzanian citizens. Around 72,000 Rwandan refugees are to be found in the Republic of the Congo, the DRC and Uganda. Burundi and Rwanda also have significant numbers of refugees living on their territory, some 95,000 and 55,000 respectively, most of them from the DRC.

### *Zimbabwe*

The movement of Zimbabweans to other Southern African states – above all to South Africa – has been the subject of considerable international attention. Recent research by academics and NGOs has highlighted the vulnerability of these Zimbabweans, many of whom have fallen into a “protection gap” because most are not recognized as refugees in South Africa and yet are confronted with numerous hardships and dangers both during their journey and after arrival. (see e.g. Bloch 2008; Betts and Kaytaz 2009;).

As a recent IOM report has underlined, the factors shaping Zimbabwean movement are multiple and interrelated (IOM 2010). The country's economy, society and political system have undergone considerable upheaval in recent years, prompting large-scale cross-border and circular movements of people including, shoppers, traders, migrant workers, refugees, asylum seekers and unaccompanied children. Although there have been some improvements in the economic and political situation since the ZANU/MDC power-sharing agreement was entered into in 2009, there does not yet appear to have been a significant reduction in the number of arrivals in South Africa.

### *Other source countries*

Southern Africa has also witnessed mixed movements from other countries of origin. There are, for example, around 7,000 recognized Angolan refugees and 13,000 Angolan asylum seekers in South Africa, with larger numbers in the DRC and Zambia and smaller populations in Namibia and Botswana. Migrants also move to South Africa from other Southern Africa Development Community (SADC) countries.

Recent years have also seen a notable growth in migratory flows from outside Africa, involving Bangladeshi, Indian and Pakistani nationals. There have been several recent reports from Tanzania of Bangladeshi and Pakistani irregular migrants being apprehended *en route* to Mozambique and South Africa. The southerly migration of these groups may involve contract labourers already working in the Gulf or East Africa who subsequently move onwards. Very little is known about the origin or organization of such movements and further research into these issues would be of considerable value to the formulation of appropriate refugee protection and migration management responses.

### **In transit to the south**

Understanding the journeys taken by refugees, asylum seekers and migrants travelling

to Southern Africa is a complex task as such mixed movements are extremely dynamic, with the routes used by smugglers often changing at short notice in order to evade border controls and checkpoints that have been introduced to intercept irregular migrants (IOM 2009b: 41).

The costs associated with such movements vary considerably and are dependent on the final destination and mode of transport. For example, Ethiopians interviewed by the TMTF reported paying a fare of USD 850 to move from the Kenya/Tanzania border to Malawi, or USD 1,700 to South Africa (TMTF 2008: 13).

#### *Air travel*

IOM's 2009 study of the smuggling of male migrants, refugees and asylum seekers to South Africa suggests that air travel plays a significant role in the movement of Ethiopians and Somalis to Southern Africa. Some 39 per cent of Ethiopians and 10 per cent of Somalis interviewed used air transport for part of their journey, usually flying to the capitals of South Africa's neighbouring states (Harare, Maputo, Lilongwe or Lusaka) from Nairobi (IOM 2009b: 42-43).

These journeys usually continue overland, with Mozambique being the last transit country visited on the way to South Africa for 60 per cent of the Ethiopians and for 80 per cent of the Somalis interviewed. The remainder crossed at the Zimbabwe-South Africa border (IOM 2009b: 43). These findings suggest that more attention needs to be paid to the use of air travel as a component of the mixed migratory movement to Southern Africa.

#### *Sea travel*

Migration sea routes from the East and Horn of Africa to the southern part of the continent have become increasingly important. This is likely to be a response to the growing difficulty of travelling and crossing borders by land. IOM's 2009 study, "In Pursuit of the Southern Dream", suggests that in 2009 around one-third of all Somalis and Ethiopians travelling to South Africa used a sea route for at least part of their journey.

Several different sea routes have been used by refugees and migrants. They include travel by boat from Mogadishu and Kismayo in Somalia to Mombasa in Kenya, and then from Mombasa to Pemba or Mocimboa in Mozambique, or to a variety of destinations in Tanzania, including Dar es Salaam, Tanga and Bagamayo.

There is growing evidence to indicate that smugglers are increasingly bypassing East African land routes and arranging for their clients to travel directly by boat from Kismayo in Somalia to Cabo Delgado in Mozambique. It is important to note that sea routes are often circuitous and include additional movements by land. For example, both IOM's research and the TMTF survey found that on arrival in Mozambique by boat, smugglers would then move their clients back to Tanzania by land so that they could later enter Malawi (IOM 2009b: 46; TMTF 2008).

Travel by sea involves a number of protection risks and humanitarian concerns. IOM's research indicates that most of the refugees, asylum seekers and migrants

moving from the Horn of Africa by boat are given no food or water for the duration of the journey, which often lasts several days (IOM 2009b: 44). New arrivals are often left without shelter once they have disembarked at a port and are thus vulnerable to exploitation, robbery and harassment, sometimes by law enforcement agents.

Fatalities along this coastal Indian Ocean route do not yet compare with the number of people left dead on the notoriously dangerous Gulf of Aden and Red Sea passages between the Horn and Yemen. However, recent reports suggest that as the numbers using this route increase, the number of fatalities will also rise. In the first two weeks of June 2010, more than 20 people drowned off the coast at Tanga, Tanzania, and at least nine Somalis died (with more than 40 missing and feared dead) off Cabo Delgado, Mozambique.

### *Overland travel*

IOM's research indicates that 93 per cent of Somalis and 89 per cent of Ethiopians travelled overland for at least some part of their journey to Southern Africa (IOM 2009a: 49). The figures for mixed migratory movements from the Great Lakes are likely to be comparable if not higher, given the lack of direct access to sea routes.

Overland routes are often circuitous, and may pass through Uganda, Rwanda, Burundi, Zambia, Malawi, Mozambique and Zimbabwe. This in part reflects the way in which smugglers are adapting to changing conditions in order to avoid detection, frequently switching between different unofficial tracks or "panyas". Overland travel is undertaken in buses, trucks, containers, cars and also on foot. In the course of their journey, the physical and mental condition of the people concerned often deteriorates and they are exposed to severe abuse and exploitation. It is impossible to say how many people set out on such journeys but lose their lives in the process.

Smuggling networks appear to bring their clients together in large groups so as to save costs and maximize profits. IOM and UNHCR research suggests that people may start out in relatively small groups of between eight and 30 people, but may be part of a group of more than 100 people by the time they have reached the Mozambique border (IOM 2009b: 50-51; Crisp and Kiragu 2010). As these groups expand, encompassing people from a variety of source countries and with different motivations for moving, the task of identifying those with protection needs and providing them with appropriate services and assistance becomes increasingly difficult.

Overland journeys from the Horn of Africa to Southern Africa tend to begin in Kenya for both Somalis and Ethiopians, where there are well-established Somali and Ethiopian communities, both in the Dadaab and Kakuma refugee camps and in Nairobi. They then cross into Tanzania. In 2008, the TMTF recorded a total of 74,215 "officially identified" irregular arrivals in Tanzania, suggesting that the actual figure "could run into hundreds of thousands of persons" if the total number of Great Lakes citizens irregularly settling in the north-west of the country is included (TMTF 2008).

Some of these individuals have an interest in settling in Tanzania and do not continue towards Southern Africa. Even so, Tanzania regularly apprehends considerable numbers of irregular migrants moving to the south. In January 2008, 1,289 migrants from 12 different states were being held in Tanzanian detention centres (TMTF 2008),

most of them Ethiopians. So far, IOM has assisted over 1,000 Ethiopians to go home through its Assisted Voluntary Return and Reintegration Programs (VARRP) for stranded migrants. Many of those detained in Tanzania, however, move onwards through Malawi, Zambia, Zimbabwe and Mozambique, with the majority of them then crossing through the Zimbabwean or Mozambican borders to South Africa.

One difficult issue faced by all transit states is the question of how to deal with those arriving in an irregular manner who are detected and apprehended. Return to the country of origin is often not possible (for reasons of capacity as well as protection concerns), and many of them, if deported across the border, simply make repeated attempts to move on until their efforts are successful. Similarly, states in the region do not generally find it possible to return recognized refugees to their country of first asylum.

In Malawi, there is evidence to suggest that people moving south use existing refugee facilities as temporary 'refueling' or 'rest and recuperation' facilities. Dzaleka refugee camp in Malawi has a separate transit area where new arrivals from the Horn of Africa stay for a few days or weeks before continuing their journey. As indicated earlier, IOM's research estimated that 60 per cent of Ethiopian and 80 per cent of Somalis heading south pass through the camp.

The movement of Zimbabweans to South Africa has, in view of the number of people involved, important implications for all foreign nationals who are making their way to the same destination. In 2009, special visa waiver procedures were introduced, allowing Zimbabweans to travel to South Africa and to remain for up to 90 days with the right to work. However, while entry to South Africa is free, Zimbabwean passports and exit visas are expensive to obtain and as a result many Zimbabweans continue to arrive irregularly (often cutting their way through a razor wire fence) and apply for an asylum permit on arrival.

The border area is a dangerous one, characterized by the presence of *malaisha* (taxi drivers) and *magumaguma* (scavengers). The *magumaguma* are feared for their violent attacks on new arrivals while the *malaisha* are responsible for spreading misinformation about entry procedures, organizing cross-border transport and encouraging the movement of unaccompanied children – a problem that appears to be growing in scale.

#### *Onward refugee movement*

It is important to note that mixed migratory movements from the East and Horn of Africa and the Great Lakes region involve a significant (but unknown) number of refugees who are moving on from their country of first asylum. This dynamic poses particular challenges for transit countries and appears to be especially prevalent amongst Somali refugees.

There is considerable onward movement, for example, from the Dadaab and Kakuma camps in Kenya, where population pressures, very limited access to livelihoods and restrictions on freedom of movement mean that many refugees, frustrated at the lack of any immediate solution to their plight, choose to move on. Similarly, there is evidence to suggest that some of the Burundian, Congolese, Eritreans and Rwandans

moving south are people who have chosen to leave refugee camps in the region to look for better protection and opportunities elsewhere.

These movements present several protection challenges. Recognized refugees cannot be returned to their country of origin and must be protected against refoulement. Moreover, states in the region generally lack the capacity to identify and return refugees who are engaged in onward movement, while countries of first asylum are unwilling to readmit refugees who have left their territory. Complicating the issue further is an essentially unresolved international debate concerning the notion of “effective protection” and the circumstances under which states and UNHCR consider it legitimate for a refugee to engage in onward movement.

### **Destination countries**

South Africa is the most important destination country for mixed movements southward from the East and Horn of Africa and the Great Lakes region, as well as from Zimbabwe and other Southern African countries. As discussed earlier, the exact number of foreign nationals in South Africa is a controversial issue, but has been roughly estimated by Witwatersrand University to involve at least 1.5 million Zimbabweans, 100,000 people from the Horn, 50,000 from the Great Lakes region, 20,000 Angolans and additional numbers from other SADC countries.

South Africa is currently the largest single recipient of asylum applications in the world. It has more than 300,000 asylum cases pending, half of them from Zimbabweans. It also has a population of some 48,000 registered refugees.

The number of refugees, asylum seekers and migrants arriving in South Africa presents a number of formidable challenges to the South African state and society. The country is faced with high levels of internal rural-to-urban migration. Levels of unemployment are high amongst South African citizens – around 27 per cent according to the ILO.

The country’s powerful trade union movement is concerned to protect the rights of its members, while the country’s vibrant civil society has persistently challenged the government in relation to its treatment of foreign nationals. In May 2008, moreover, the country was convulsed by a spate of xenophobic violence that left dozens of non-South Africans (and a smaller number of citizens) dead, and which displaced an estimated 100,000 people.

Under South African legislation, foreign nationals may remain and work in the country if they submit a claim to refugee status and register for a renewable asylum permit. The unfortunate outcome of this arrangement has been that large numbers of people without a valid claim to refugee status have entered and overwhelmed the asylum system, leading to a decline in the quality and efficiency of refugee status determination and the probable denial of refugee status and its entitlements to some people who deserve it. In the absence of regular migration alternatives, the asylum channel has become the only way to stay in the country.

While South Africa is clearly the most important destination country in the region

covered by this paper, it would be wrong to give the impression that the people involved in mixed migratory movements invariably end their journey in that country. Refugees, asylum seekers and migrants – either intentionally or because they are unable to complete their intended journey – also take up residence in states throughout East Africa, the Horn and Great Lakes region.

Malawi, for example, has a long-term population of refugees, primarily from the Great Lakes region, living at the Dzaleka refugee camp, while a similar population of refugees and asylum seekers is to be found at the Maratane refugee camp near the northern Mozambican city of Nampula. In contrast to those from the Great Lakes region, people originating from the Horn of Africa tend to remain in these camps for just a short period of time before continuing their journey to South Africa. A significant number then use South Africa as a point of departure for onward movements to destinations beyond the African continent.

### **Protection, assistance and security challenges**

Mixed migratory movements from the East and Horn of Africa and the Great Lakes region involve many protection and assistance challenges. As discussed earlier in this paper, some of those moving south are doing so to escape from persecution, violence and poor governance in their country of origin, while others are refugees who have moved on from their country of first asylum in search of better protection, long-term solutions and improved opportunities. Many people also move for a combination of other reasons ranging from socio-economic to environmental and climatic and political factors.

These movements include people who become vulnerable and develop protection needs in the course of their journey, sometimes as a result of exploitation by smugglers and, more rarely, by traffickers. Some of those travelling in mixed migratory movements may also encounter the threat of discrimination, extortion and xenophobia once they have arrived in their country of destination.

Migration, especially irregular movement from countries with different and distinct cultures, is also an emotive political issue, with citizens in receiving countries expecting their governments to address the issue in a way that protects their interests and allays their fears. In general, however, the public, government and even civil society are inadequately informed about the nature of mixed movements and the protection, service and assistance needs of people who are on the move.

As well as raising many protection and humanitarian concerns, the irregular movement of people to Southern Africa has important implications for the security of states and their citizens. Governments have an evident interest in knowing the identity of any foreign nationals on their territory and in preventing the entry of any new arrivals who do not meet the country's immigration requirements. Irregular and uncontrolled movement renders that task impossible.

States cannot simply ignore irregular migration and mixed movements through their territory. Responding only with enforcement measures and efforts to obstruct or deter movements, however, tends to divert the flow to new and more dangerous routes and

drive migrants further underground, making it even more difficult for them to access the support they need. To properly manage this challenge, governments need effective mechanisms to differentiate between refugees, asylum seekers, trafficked persons and other migrants, as well as the capacity to deliver the protection, assistance and services appropriate to their needs.

### **Protection-sensitive entry systems and rights-based approaches**

States have a sovereign right to determine who to admit and who to exclude or expel from their territory. However, their legitimate concern to control unauthorized entry must be exercised within the limits of international human rights and refugee law, including respect for the right to seek asylum and the principle of non-refoulement.

A refugee protection and migration management system that ensures respect for the human rights of people on the move should also be based on other values, including non-discrimination, family unity, due process and the principles of humanitarian action. Such systems should aim to maximize the economic, social and other benefits of migration for the home and host countries and the migrants themselves, minimize the negative consequences and achieve a balanced approach to irregular migration.

Developing protection-sensitive entry systems and rights-based approaches founded on appropriate national refugee legislation and administrative procedures is an essential first step if states are to meet these obligations. Such systems reduce the vulnerability of new arrivals and make borders more safe and secure by encouraging refugees, asylum seekers and others to make use of formal border crossings.

To make such entry systems effective, it is crucial to ensure that border control and immigration officials are provided with training in relation to their protection obligations. In Zambia, for example, UNHCR collaborates with IOM and the National Commissioner for Refugees in the provision of training to relevant officials. In Tanzania, the Centre for the Study of Forced Migration, at the School of Law, University of Dar Es Salaam, is an important resource, providing various training courses to immigration and other officials.

In response to requests from African governments to help strengthen their capacity for comprehensive migration management, IOM has collaborated with the government of Tanzania to establish the African Capacity Building Center (ACBC) in Moshi, Tanzania. The Center promotes international understanding of migrants and migration issues and sound migration governance, including through the development, delivery and institutionalization of migration management training programmes, both in Moshi and in the countries concerned.

In Angola, a joint IOM/UNHCR border project with the Angolan Department of Immigration has been developed to strengthen official capacity in the areas of refugee protection and migration management. Three training sessions involving 335 officials have been held, focusing on the identification and referral of asylum seekers and migrants with specific needs.

But legislation and training alone are not enough. An effective protection-sensitive



entry system requires a country to have an adequate number of official border crossings (otherwise people will use informal entry points) as well as the vehicles, fuel supply and personnel required to patrol the long and porous frontiers that characterize this part of Africa. Equally important are measures to control bribery, corruption and extortion in border crossing procedures. In this respect states have an interest in and an obligation to ensure that immigration officials and security personnel are adequately and regularly paid, properly trained and held accountable for their actions.

A further concern is that of language. The vast majority of people moving south from the Horn of Africa and Great Lakes region do not speak English or Portuguese. Effective communication between border officials and new arrivals is essential if entry systems are to function in a protection-sensitive manner.

In addition to the provision of language training, leaflets and signs in relevant languages could be made available at entry points and reception centres, so as to provide migrants, refugees and asylum seekers with accurate information about their rights, obligations, as well as the dangers of clandestine movement and the possibilities of legal migration. IOM, for example, has established information and education programmes in Somalia, Ethiopia and Kenya that target potential migrants, focusing on the dangers associated with smuggling and trafficking.

### **Status determination and profiling**

Protection-sensitive entry systems must be complemented with processes and procedures that are able to identify those new arrivals who have a claim to refugee status under the UN or OAU Refugee Conventions or who have other protection needs. UNHCR's 10-Point Plan recommends the establishment of initial profiling and referral mechanisms that provide "a good indication of a person's motives for departure and ensures that the person's situation is met with the most appropriate response" (UNHCR 2007a).

It is also essential to ensure that RSD procedures are fair, thorough and timely, so refugees can be granted asylum, protected from refoulement and provided with durable solutions opportunities. Moreover, if people who are in need of protection cannot access an RSD procedure, have to wait for long periods before a decision on their case is made or are unable to lodge an appeal against a negative decision, then they are much more likely to engage in onward movement to another state.

The establishment of effective profiling, referral and RSD procedures is likely to prove particularly problematic if large numbers of people who are moving for the purpose of work can only gain access to the labour market by submitting an asylum application. This is essentially the case in South Africa, where, according to one study, "reform of the refugee reception system without broader reform of South Africa's immigration management system is unlikely to be effective . . . the refugee system must stand separate from and parallel to the system of immigration control" (Amit 2010b: 78).

The need for such an approach was fully acknowledged in a speech given by the

Deputy Minister for Home Affairs, Mr. Malusi Gigaba, on World Refugee Day in June 2010. “The challenge we are facing,” he observed, “is that many economic migrants take advantage of the asylum route in order to regularize their stay in South Africa simply because there are not other options. This results in the asylum system being clogged up. “What is certain,” he concluded, “is that the South African immigration policy cannot remain the same way as it currently is.”

As this statement suggests, an important means of reducing the strains placed on national asylum systems can be the establishment of legal migration channels, thereby averting the need for people without protection needs to claim refugee status. Streamlined or fast-track processes for manifestly unfounded or well-founded claims could also be developed with support from UNHCR so as to further alleviate the pressure on asylum systems.

### **Assistance and services**

Many of the challenges associated with mixed movements arise during the transit phase, when refugees, asylum seekers and migrants are travelling through different countries on their way to places of final destination. In many cases, those people are in urgent need of food, water and shelter; legal advice and counselling; and information about their options, including return and the submission of asylum claims; as well as access to health care and other social services (especially where children or other vulnerable groups are concerned).

Cooperation with civil society organizations is essential in this respect, as they are often able to gain access to and win the trust of new arrivals, especially when those are in an irregular situation. Such organizations may also represent an essential conduit for building tolerance and understanding and easing tensions between foreign nationals and the communities with whom they come into contact. Civil society organizations also play an essential role as service providers.

Stranded migrants should receive particular attention in this context. The term “stranded migrant” refers to individuals who have entered a country of transit or destination, but who have not been granted the right to stay there, while at the same time being unable to return to their own country or to move on to another state. Their predicament may stem from an inability or unwillingness to provide evidence of their nationality, combined with a refusal by states to admit or readmit them. Inter-state cooperation is especially important so as to avoid situations in which people are pushed backwards and forwards between two or more countries.

### **Detention and deportation**

The detention of foreign nationals for irregular entry, especially when it involves refugees and asylum seekers, raises a number of challenges and concerns. It is essential to ensure that this practice conforms to national and international law and human rights standards. Detention should only be used as a measure of last resort and for the shortest possible period of time and should never be employed arbitrarily.

Unfortunately, some states in the region have been unable to ensure that detainees are treated in accordance with the applicable standards. There is also evidence to suggest that in certain states, some of those detained may have been in possession of valid travel documents at the time of their arrest. Effective safeguards are evidently required to prevent such mistakes from occurring. Detained individuals should have access to international and civil society organizations that can offer them protection, assistance and services and, where possible, legal representation. More specifically, refugees and asylum seekers in detention must have access to UNHCR, and other migrants should be able to access consular officials from their country of origin.

Particular difficulties can arise, both for states and detainees, when the latter are held for prolonged periods, often because they cannot, for one reason or another, be returned to their country of origin, transit or first asylum. Similarly, standards for lawful and humane detention are unlikely to be upheld in situations where irregular arrivals are apprehended in a border area with no dedicated immigration detention facilities, or without transport available to move them to another and more suitable location. Consequently, they may be held in police stations or prisons together with criminal detainees.

States have a right to deport foreign nationals who have entered a country in an irregular manner if they do not have a need for international protection as refugees or if their return would violate other international human rights obligations. However, in making such decisions, states must comply with obligations set down in international law. In particular, due process is required to ensure that every individual's claim to international protection is properly assessed prior to removal and that no refugee is at risk of refoulement. Even where persons are not in need of international protection, return may nevertheless be impossible due to conditions in the country of origin and practical logistical obstacles, such as the lack of commercial flights.

It is important that deportations and removals, when they occur, follow due process and respect for human rights. Return should take place in safe, dignified and humane conditions. Arbitrary and sudden deportations, particularly when targeted at specific groups, are more likely to lead to serious human rights violations and deprive the people concerned of an opportunity to prepare for their departure and reintegration in their country of origin. Access to counselling, where available, is also important. The practice of dumping deportees in remote border areas places them at risk and cannot be accepted.

In terms of the mixed movements examined in this paper, deportation can raise both practical and political issues. Mozambique, for example, regularly returns irregular migrants to neighbouring Malawi, which does not have the capacity to return them to Tanzania, the previous country of transit for most of those apprehended. In practice, the majority of those deported to Malawi simply return to the border after a short period of time and try once again to continue their irregular southward journey, suggesting that the deportation exercise is somewhat fruitless.

Even if every state had the capacity and will to intercept and deport new arrivals to their country of transit, origin or first asylum, there is little evidence to suggest that this would "solve" the issue of mixed movements from the East and Horn of Africa and the Great Lakes region. Since April 2009, for example, South Africa has observed

a moratorium on the deportation of Zimbabweans, recognizing that deportation is of limited value (not to mention being a substantial expense and a serious logistical challenge) when responding to a very large influx of people who are determined to make their way to another country.

### **People with specific needs**

Comprehensive refugee protection and migration management systems, while striving to provide protection, assistance and services to all, must also meet the special needs of some groups and individuals. Unaccompanied children, as well as victims of trafficking, torture and trauma, are among those found within mixed migratory movements who require a differentiated and focused response from states, international organizations and other actors. Others requiring special protection and assistance include victims of gender-based violence and other types of violence, the sick and elderly and people with disabilities.

The extent and nature of child migration from the Horn of Africa and Great Lakes region through East and Southern Africa is difficult to quantify or analyse as little empirical evidence exists in relation to this issue. It seems likely that most refugee and migrant children in Southern Africa originate from within the SADC region itself. UNICEF, for example, estimates that there are around 20,000 child migrants in South Africa, the majority of whom are from Zimbabwe. The TMTF survey of migrants detained in Tanzania found 144 Somali detainees under 18 years of age (some 37 per cent of the total number of Somalis surveyed), 64 of whom were under 15 (16 per cent).

Such figures (although they are not fully consistent) suggest that the movement of children across international borders in Southern Africa is a significant issue. If it is to be addressed in an effective and equitable manner, adequate training and resources will be required so as to ensure that the authorities can undertake a thorough Best Interests Determination (BID) in relation to the future of such minors.

As with children, it is difficult to ascertain how many victims of trafficking are caught up in mixed movements to Southern Africa. The overwhelming majority of refugees, asylum seekers and migrants who take this route are young men, and IOM's 2009 report "In Pursuit of the Southern Dream" found no real evidence of the trafficking of males from the Horn of Africa, although migrants were exposed to serious abuse and violence while en route.

An earlier (2003) IOM report on the trafficking of women and girls for sexual exploitation suggested that 1,000 Mozambican women and girls were transported to South Africa every year for that purpose, with significant numbers also being trafficked from Malawi. IOM is also aware of cases of human trafficking from the East and Horn of Africa and the Great Lakes region to countries in Southern Africa and, in particular, South Africa. Some commentators have also suggested that South Africa acts as a hub for the trafficking of African women and girls to Europe.

It is important to ensure that anti-trafficking programmes are established in countries of origin, transit and destination, and that procedures are put in place for the

prosecution of traffickers and the early identification of trafficking victims, so that they can be offered appropriate counselling, assistance, protection and solutions.

Identifying the victims of trafficking can present a significant challenge, as all elements of the crime of “trafficking in persons”, as set out in the relevant Palermo Protocol, may not be evident. Individuals may nevertheless be caught up in dangerous and exploitative situations that place them at real and acute risk. Thus, the provision of effective protection, assistance and services to such vulnerable migrants should not be contingent upon whether they meet the legal definition of a trafficked person.

Support for trafficking victims may entail the granting of a regularized status in the country of residence or the provision of assistance in returning to and reintegrating in the country of origin. IOM has played a particularly important role in the latter respect, and in 2004 established a centre for the victims of trafficking in Addis Ababa, offering rehabilitation and reintegration support. Such initiatives are particularly important if re-trafficking is to be averted. IOM’s Southern African Counter-Trafficking Assistance Programme (SACTAP) has also provided counter-trafficking training for law enforcement and border officials, health professionals, labour inspectors, NGOs and the media.

### **State security, good governance and protection**

Human smuggling is central to the mixed movements examined in this paper and is a phenomenon that clearly exacerbates the problems of bribery, corruption and extortion in the border crossing process. In this respect, the issue of mixed movement is directly linked to the much broader challenges of good governance, state transparency and accountability. In the words of IOM, smuggling creates “a climate where public officials abuse their position for private gain. This impunity corrodes the integrity and effectiveness of democratic government and ultimately undermines its authority, neutrality and the rule of law” (IOM 2009a: 9).

It is evident that smugglers run well-organized, dynamic operations that involve a constantly changing network of collaborators, including recruitment agents, truck drivers and transporters, boat owners, providers of forged and stolen documents, border guards, immigration and refugee officials, members of the police and military. The available evidence, in fact, suggests that the number of trafficking victims in Southern Africa is relatively small in comparison to those who depend upon smugglers to organize their movement.

Human smuggling is also a lucrative illicit business. The annual revenue flow from smuggling toward South Africa is estimated at around USD 40 million, the profits of which are not only untaxed but which may also be used to fund other forms of organized crime (Reuters 2010).

It has been suggested that up to 50 Somali smuggling groups currently control the irregular migratory route to Southern Africa. Paradoxically, of course, while smuggling is a criminal and often exploitative act, it also provides one means whereby many Somalis can move to the relative safety, security and better economic opportunities offered by South Africa. Hence the need exists for anti-smuggling

measures to be complemented by opening up legal migration channels and establishing effective protection-sensitive entry systems and rights-based approaches.

The crime and corruption involved in human smuggling has serious protection as well as security implications. Smugglers have an interest in maintaining control over their 'clients' so as to protect and boost their profits. In order to do so, they have to prevent them from having direct contact with government officials, international organizations and NGOs. Similarly, the business model and profits of the smugglers might well be threatened if actual and potential clients had access to accurate information about their rights, as well as the difficulties and dangers they might encounter on their journey.

Multilateral measures, including (as IOM has recommended) the regional harmonization of anti-smuggling policies and procedures, as well as regular information sharing, are essential if this problem is to be addressed. States that are not already parties to the Palermo Protocols on smuggling and trafficking should be encouraged to ratify them. Developing government capacities is also important. While trafficking in persons is a well-established concept, officials are often unaware of the concept of smuggling and the legal protections offered by the Smuggling Protocol, suggesting the need for raising the profile of this instrument and its requirements in the region.

Above all, measures to combat smuggling and trafficking should focus on punishing the perpetrators of these activities and should not lead to the criminalization of migration and those who are on the move. This is of particular importance in view of the fact that the mixed movement to Southern Africa includes a significant proportion of people who have a valid claim to refugee status under the terms of the 1951 Refugee Convention and 1969 OAU Refugee Convention, and should therefore not be penalized for irregular entry to a state.

Finally, mixed movement may also have more direct and dramatic implications for state security. Growing concerns have been expressed, for example, with respect to the possible involvement of militants and extremists in the mixed movement from the Horn of Africa to the southern tip of the continent.

In January 2007, Kenya closed its border with Somalia in response to the growing number of people escaping from the escalating violence in southern and central Somalia, including areas controlled by the fundamentalist movements Al-Shabaab and Hizbul Islam. One of the reasons given for this border closure was the risk that the refugee influxes could be used to camouflage the infiltration of extremists.

Fears of this kind were reinforced on 11 July 2010, when two bombs exploded in Kampala, Uganda, killing 74 people as they were watching the World Cup final on TV. Responsibility for the attack was claimed by Al-Shabaab, which linked the act to Uganda's involvement in peacekeeping activities in Somalia. Since that time, UNHCR has expressed concerns about the increasingly hostile atmosphere confronting Somali refugees throughout much of the region.

## **Deterrence, containment and mobility**

In an effort to defend their sovereignty and security, many states in the region (as with states in most other parts of the world) have introduced measures that are intended to tighten their border controls and to prevent the arrival of irregular migrants on their territory. Although some of the measures implemented in this context – such as increased detention and deportation – may act as a temporary deterrent to irregular movement and at the same time allay public fears, it is arguable as to whether they are effective or strengthen state security in the longer term.

Recent experience has demonstrated that it is virtually impossible to contain a population within its national borders when the drivers and incentives for departure are so powerful. This is especially the case for countries in conflict in the East and Horn of Africa and the Great Lakes region, where borders are long and highly porous, where states lack the resources and capacity to enforce stringent controls on population movement, where smugglers have proved adept at establishing new migration routes and where people who feel obliged to move are well connected to global sources of information and money.

In this context, a purely control and enforcement-oriented approach to migration management threatens to absorb a huge amount of state resources without a corresponding diminution in the scale of the problem. Similar reservations must be expressed in relation to the notion of confining refugees to camps and preventing their onward movement both within and from their country of first asylum. Such policies and practices do not contain refugees, but actually encourage their irregular movement by restricting their ability to establish livelihoods and by forcing them to rely on steadily declining levels of international assistance.

It is for this reason that UNHCR, and the High Commissioner himself, has in recent years launched a series of initiatives to address and resolve the plight of people trapped in protracted refugee situations; uphold the right of refugees to live and enjoy protection in urban areas; promote refugee livelihoods and self-reliance; and to take fuller account of the mobility and migration strategies of refugees themselves in the search for durable solutions (Long 2009, 2010a).

These approaches are particularly apposite in relation to those Somalis who, even if they are granted refugee status and have access to international assistance, nevertheless wish to continue their southward journey rather than remain in a camp in their country of first asylum.

For such Somalis, the most meaningful form of protection is that which enables them to exercise freedom of movement, live independently in urban centres, rejoin members of their clan and community, establish their own livelihoods and gain access to educational opportunities that were denied to them in their country of origin. Such objectives suggest a need to rethink the meaning of long-established concepts such as “refugee protection and solutions” in an increasingly globalized and mobilized world.

## **Alternative approaches**

Rather than focusing solely on containment and deterrence, alternative strategies are needed to address the issue of mixed movements to Southern Africa from the East and Horn of Africa and the Great Lakes region. On the basis of the analysis presented in this paper, those strategies should:

- recognize the legitimate concern of states to protect their sovereignty and security;
- uphold the provisions of international and regional refugee and human rights law;
- respect the principles of safe and humane migration management;
- facilitate the cross-border movement of people in a legal, regular and orderly manner;
- meet the protection and assistance needs of refugees and migrants;
- combat the smuggling networks and corruption that enable irregular movement to thrive;
- address the underlying causes of refugee flight and reduce the human security challenges and economic inequalities that underpin current patterns of southward movement; and
- promote bilateral and regional cooperation and dialogue on refugee protection and migration management strategies, including with civil society.

The following sections examine some recent approaches and initiatives that have sought to put these principles into practice.

## **Action in places of origin**

People do not normally set out on long, difficult, dangerous and expensive journeys unless they have good reasons to do so. In the region covered by this paper, the movement south is prompted by a number of considerations, including the fear of being persecuted or subjected to serious human rights violations in their countries of origin; the problems that many people experience in establishing peaceful, productive and prosperous lives in such countries; the much better economic, educational and opportunities that appear to be available elsewhere; and unrealistic notions of the costs and benefits of movement, generated in part by unscrupulous smugglers and traffickers.

While these conditions pertain, the mixed movements to the south seem likely to continue, irrespective of the barriers that states seek to place in the way of such mobility. A logical response to this situation is to take appropriate action in places of origin, addressing the conditions that prompt people to move and thereby averting the



need for them to leave their country and community and ensuring to the extent possible that migration is a true choice.

Such initiatives can take a number of different forms. While it falls beyond the scope of this paper, the first and most important of those approaches – but equally the most difficult – requires concerted action to address the governance, developmental and diplomatic failures that have prompted so many people to leave their country and to look for sanctuary elsewhere. In this respect, the issue of mixed movements can only be dealt with effectively if it is seen in the context of issues such as conflict prevention and resolution, the promotion of human rights and democratization, and the abolition of impunity.

A second approach is that of promoting local development in areas with high levels of emigration, providing people with incentives to remain in their own communities. While the creation of jobs and other livelihoods is evidently key to the success of such initiatives, the notion of local development must also be seen in a broader perspective, involving the establishment of effective and affordable services in areas such as health, education, water and sanitation. This approach is evidently not one that can be pursued alone by the national and international entities responsible for migration-related matters. It requires the full engagement of the states concerned and the support of the development community.

Third, a number of donor states have taken the position that the onward movement of refugees might be effectively averted if steps could be taken to strengthen the protection and assistance available to them in their country of first asylum. According to this argument, refugees who are ‘warehoused’ for years on end in large camps with limited livelihoods opportunities, rampant social problems and minimal levels of material support will inevitably look for greener pastures elsewhere. Improve the lives and prospects of refugees, this approach suggests, and they are less likely to incur the costs and take the risks of irregular onward movement.

Another approach is that of undertaking migration information campaigns which set out to inform potential migrants of the risks that they take in moving by irregular means and the opportunities that exist for safe and regular movement. IOM has embarked on a regional mass awareness and information campaign in collaboration with government, civil society and local media in the East and Horn of Africa, including Djibouti, Ethiopia, Kenya, Sudan and Uganda, to provide timely and reliable information to potential migrants. Migration information programmes, of course, are not a solution where people are confronted with immediate threats to their lives and livelihoods. Even in more peaceful contexts, such campaigns must compete with the information, images and ideas bombarding many Africans, which promote the notion that better opportunities exist abroad than can be found at home.

While all of these strategies are worthy of further consideration, their limitations should also be acknowledged. Peacemaking, peacekeeping and peacebuilding are of vital concern to many African citizens, but such approaches will not be put into practical effect simply because of growing concerns around the issue of mixed movements.

Local development is also often an elusive goal, dependent on the implementation of appropriate and equitable economic policies at the national level. In the short term at least, people with access to higher incomes may actually be more rather than less prone to migrate. And while the notion of improving the protection and assistance available to refugees is an inherently positive one, it is a strategy that requires the full support of both host and donor states and which runs the risk of privileging refugees over equally poor members of the host community.

Migration should ultimately be seen in terms of its potential contributions to national development. Migration builds human capacity, with migrants bringing skills and also often returning home with new skills. Migrants also build economic links between their host and home countries and can be an engine of economic development on both sides as a source of labour and remittances. The goal should not be to suppress migration but rather to ensure it is a true choice and yields maximum benefits for the individuals, communities and countries concerned.

### **National and regional strategies and partnerships**

A number of transit and destination countries in the region under review have developed their own strategies for responding to mixed migratory movements. In Tanzania, for example, a Ministerial Task Force, involving the Ministry of Home Affairs, IOM, UNHCR and the national and international Red Cross was established in 2008 to examine the phenomenon of mixed movements through Tanzania and to consider appropriate responses. The work of the Task Force has provided a rare and important source of empirical data on this issue, allowing better mapping and understanding of the movement of people through the country.

In South Africa, where the issue of mixed movement is in many ways most pressing, the Department of Home Affairs (DHA) has announced its decision “to shift the international migration paradigm away from trying to combat what is an inevitable process towards seeking to manage it in the national interest, as well as in the interests of immigrants themselves, in a proactive rather than reactive way.”<sup>5</sup> In order to attain these objectives, the DHA has:

- embarked upon extensive consultations with a wide range of stakeholders, including the business community and trade union movement;
- initiated “an extensive immigration policy review” that will “overhaul the asylum seeker and refugee system in toto”;
- engaged with other Home Affairs Ministers in the region, “with a view to adopting uniform policies across the region on international migration, so as “to facilitate human movement and encourage regular migration.”

With respect to regional approaches, the SADC has a particularly important role to play, in the sense that the organization includes countries that are sources of mixed

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<sup>5</sup> Statement by Deputy Home Affairs Minister Malusi Gigaba on the occasion of World Refugee Day, June 2010.

migratory flows, others that are primarily transit countries and some that are destination states, while several fall within at least two of these categories. SADC therefore offers an important potential forum for the development of a regional approach to the issue of mixed movement.

The SADC's Draft Protocol on the Facilitation of Movement of Persons was agreed in 2005 and allows for SADC member state citizens to move, work and stay in other SADC countries without a visa for up to 90 days. However, the protocol has not gone into effect, with only four states – Botswana, Mozambique, South Africa and Swaziland – having so far signed it. The protocol did, however, form the basis for the establishment of a 90-day waiver for Zimbabweans in South Africa, underlining the potential for regional frameworks to regularize the situation of irregular migrants.

In considering the potential benefits of this framework, it is important to underline that mixed migratory movements in the SADC region involve considerable numbers of people from states that are not SADC members: Ethiopia, Somalia, Burundi and Rwanda, for example. As is the case in the European Union, increased freedom of movement for SADC citizens, if such an objective can be obtained, may eventually become associated with increased restrictions on the arrival of people from outside the area.

The East African Community (EAC), whose partner states are Burundi, Kenya, Rwanda, Tanzania and Uganda, has long-term plans to develop a common market, a common currency and closer forms of political union. The EAC Common Market Protocol was signed by the five EAC Heads of State on 20 November 2009 and entered into force on 1 July 2010. It provides for the progressive introduction of measures to facilitate the free movement of persons.

Visa waiver schemes for EAC citizens have already been implemented, facilitating cross-border movement within the region. IOM has also been working with the EAC to strengthen its migration management capacity. These initiatives promise to facilitate safe and legal movement, to reduce irregular movements and the smuggling activities associated with them.

As is the case with SADC, the EAC agreement only affects the citizens of partner states and will not affect mixed movements originating in the Horn of Africa or the DRC. At the same time, there is a risk that the growing economic cooperation and integration within the EAC may reduce the amount of protection space for refugees who flee from one member country to another.<sup>6</sup>

Another interesting development is the formation of the Intergovernmental Authority on Development – Regional Consultative Process on Migration (IGAD-RCP), involving six states from the East and Horn of Africa, with development partners, international organizations and NGOs acting as observers. The next gathering of the IGAD-RCP is planned for October 2010 in Addis Ababa.

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6 Kenechukwu Esom, "The East African Community and the refugee question", July 2010, <http://www.sidint.net/the-east-african-community-and-the-refugee-question/>,

Several other regional initiatives are of relevance to the issue of cross-border population movement. The Common Market for East and Southern Africa (COMESA), whose members include Burundi, the DRC and Ethiopia, aims to establish a fully integrated and internationally competitive region in which goods, services, capital and people move freely. To date, however, its activities have focused on the liberalization of trade rather than the regularization of the movement of people.

The Migration Dialogue for Southern Africa (MIDSA) was established with the support of IOM in 2000 and now has 15 Southern African member states. MIDSA aims to promote dialogue and cooperation between member states in order to facilitate a better understanding of the dynamics of migration in the region and to encourage migration to be used as a positive instrument of development. In relation to the protection challenges associated with mixed migratory movements, MIDSA has focused particularly on the need to combat trafficking, smuggling and other forms of irregular movement, convening several workshops that have allowed states to share information and ideas on their response to such issues. A MIDSA Ministerial Meeting on Managing Migration through Regional Cooperation is planned in Namibia for November 2010.

Finally, the African Union (AU) offers a vital forum for the development of multilateral approaches to the question of mixed movement in this and other parts of the continent. The great advantage of the AU in this respect lies in its pan-African nature and its ability to develop a continent-wide perspective on the issue, thus incorporating the southward movement from the East and Horn of Africa and the Great Lakes region, the movement of people from the Horn of Africa to Yemen, the Middle East and beyond, as well as the mixed movement from sub-Saharan Africa to North Africa, the Mediterranean and Europe.

The 2006 Joint Africa-EU Declaration on Migration And Development explicitly recognized the complex socio-economic causes of African migration, and pledged both regions to “commit to a partnership between countries of origin, transit and destination to better manage migration in a comprehensive, holistic and balanced manner, in a spirit of shared responsibility and cooperation.”

In the same year, the African Union agreed a Common Position on Migration and Development and a Migration Policy Framework for Africa noting with concern that “the emphasis on addressing illegal or irregular migration has been only on security considerations rather than on broader development frameworks and on mainstreaming migration in development strategies.” The link between migration and development and the establishment of regular migration routes were identified as “priority policy issues”.

### **The role of IOM and UNHCR**

Both IOM and UNHCR have a strong interest in mixed migratory movements from the East and Horn Africa and the Great Lakes region to Southern Africa. Moreover, their approaches are highly complementary. While IOM’s primary interest lies in the safe, humane and orderly movement of people, UNHCR’s main concern is to protect the rights of refugees and asylum seekers and to find solutions for forcibly displaced

populations. As this paper has sought to demonstrate, these issues are inextricably entwined.

While it is not possible to offer a full account of IOM and UNHCR activities in the region, a brief indication of their respective roles can be provided.

Based on their distinct but complementary mandates, the two organizations have a long tradition of partnership. With respect to mixed movements, UNHCR and IOM have jointly organized Regional Conferences on Refugee Protection and International Migration, in Sana'a, Yemen (19-20 May 2008), which focused on outward movements from the East and Horn of Africa across the Gulf of Aden, and Dakar, Senegal (13-14 November 2008), which considered mixed movements within West Africa and toward Europe. In association with the government of Malawi, IOM also organized a regional workshop on mixed movement from East to Southern Africa, in which UNHCR participated.

IOM focuses on the development of comprehensive approaches to migration management, including the management of mixed migratory flows. In a "migratory life-cycle" approach from pre-departure, to transit, arrival, post-arrival and return, the five main areas of IOM's interventions on mixed migratory flows are: direct assistance to migrants; development of policy and legislation; training of government officials and other stakeholders; dissemination of information to migrants and host communities; and support to and participation in cooperation initiatives.

When providing assistance to migrants, IOM recognizes a responsibility to ensure that its activities obtain full respect for the rights of the individual, are non-discriminatory and do not diminish the human rights of others. Although IOM does not have a legal protection function based on mandate, the organization does provide *de facto* protection through its activities to persons benefiting from its services.

UNHCR's approach to the mixed migratory movement from the East and Horn of Africa and the Great Lakes region is framed primarily by the global 10-Point Plan of Action. While the 10-Point Plan is intended to ensure that refugees receive the protection and durable solutions which they need and to which they are entitled, it also has the broader objective of providing a framework for action in relation to the rights of other people who are on the move, including asylum seekers, stranded and vulnerable migrants, as well as the victims of smuggling and trafficking.

In this context, and as a result of a request made by states, UNHCR is currently undertaking an analysis of the protection gaps that affect people who are on the move and who, though they might not qualify for refugee status, are at risk of human rights abuses. The organization has also held a series of regional consultations and expert round tables on the issue of mixed movements and has produced a compilation of effective operational practices in relation to this issue.

To assess and enhance the practical impact of its work in the area of mixed movement, UNHCR is currently completing a series of field-based evaluations of its operational and advocacy activities. The fourth and final of these evaluations (following assessments already undertaken in relation to the Spanish Canary Islands, southern Italy and Morocco) focuses specifically on the Southern African countries of

Malawi, Mozambique and South Africa. The findings and recommendations of that evaluation have been taken into account in the preparation of this paper.

IOM and UNHCR are committed to enhanced cooperation with each other and with mutual partners at the global, regional and national levels. Both organizations have, for example, strengthened their relationship with the EAC in view of its growing involvement in mobility issues, and both would look forward to building cooperation with governments and regional organizations in the East and Horn of Africa, the Great Lakes region and Southern Africa.

## **Conclusion**

As this paper has sought to demonstrate, the mixed migratory movement from the East and Horn of Africa and the Great Lakes region to Southern Africa is a complex and growing phenomenon, and one that cannot be discussed in isolation from the phenomenon of mixed movement within Southern Africa itself.

While its scale is still modest by global standards, it is now attracting increased international attention: partly because of the many dangers and difficulties experienced by the people engaged in this movement; partly because of the challenges that it poses to state sovereignty and security; and partly because of a concern that these problems might become more serious unless they are addressed in a constructive and creative manner.

This paper has in general not attempted to make specific recommendations in relation to the issue of mixed movement to Southern Africa, as these are expected to result from the Dar es Salaam conference. Rather, it has attempted to examine the scope and dynamics of the issue, to identify some of the key challenges that it raises for states and other stakeholders, as well as to review some of the recent approaches and initiatives that have been taken in relation to this matter. It is hoped that the paper will provide a useful framework for discussion, analysis, information sharing and strategy formulation amongst relevant actors.

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