

# Introduction

*John Guiney SJ and Eugene Quinn*

During 2015, in excess of one million refugees and migrants risked their lives in crossing the Mediterranean Sea to enter the European Union. More than 3,700 people, one quarter of them children, died by drowning during the attempt. Europe's experience of increased forced migration is just one element of a global phenomenon of escalating displacement of people, as a result of conflict, persecution, extreme poverty, and other human rights violations. The United Nations High Commissioner for Refugees estimates that there are now, worldwide, almost 60 million displaced persons, the highest number since World War II.

Pope Francis, in an address to the Jesuit Refugee Service in November 2015, reminded us that: 'Behind these statistics are people, each of them with a name, a face, a story, an inalienable dignity which is theirs as a child of God'.

The EU response to the increased arrival of people seeking refuge has been severely inadequate and is characterised by deep divisions in approach and values. Responsibility for receiving and processing refugee claims is unevenly distributed across Member States, disproportionately falling on Italy and Greece, as the main points of arrival, and on a small number of Member States (Germany and Sweden, in particular), as the countries which the majority of refugees have been seeking to enter. During 2015, the EU Agenda on Migration, including 'relocation and resettlement' schemes, was agreed, in an attempt to distribute responsibility for refugees among Member States in a more equitable manner. However, the schemes have the capacity to reach fewer than 100,000 people annually over a two-year period – not even one tenth of the number who arrived in Europe by sea in 2015. In reality, these responsibility-sharing mechanisms among Member States are not working: by mid-March 2016, fewer than 1,000 people had been relocated from Italy and Greece.

In Ireland, the political response to the refugee crisis has not reflected the generosity and willingness to help expressed by many individuals and communities. Ireland has made a commitment to provide 4,020 resettlement and relocation places

over a 24-month period. Although this exceeds the minimum expected under EU quotas, it falls far short of what is required given the scale of need. Ireland can and should do more.

As this country faces the question of how it can provide a more generous response to the great numbers of people arriving in Europe, the situation of those who have already applied for protection under the existing Irish asylum system must not be forgotten. Hidden from sight in Direct Provision centres across the country are people who have spent years in the protection process, 'with no end in sight'. In February 2015, more than 40 per cent of applicants for protection in Ireland had been five years or more in the system. The human costs of living in Direct Provision include institutionalisation, adverse effects on family life and on children, damage to mental health, and the rendering obsolete of skills and qualifications. To a large extent, these effects arise from or are exacerbated by the excessive length of time applicants spend in the system.

On 30 June 2015, a Government-appointed Working Group published a report providing the first comprehensive review of the Irish protection process, including the Direct Provision system. The Group's report sets out detailed recommendations for reforming the protection process, eliminating excessive delays in determining claims, and improving the living conditions and supports for asylum seekers while applications are being processed. These recommendations were agreed to by all members of the Working Group, including representatives of relevant government departments and statutory bodies.

The proposals of the Working Group aimed to ensure that Ireland has a fair and transparent protection process which is providing final determinations in a timely manner – that is, within twelve months. The Working Group identified the extra resources required to implement the proposals it made to address the situation of those longest in the system. It also identified the significant additional resources that would be required to enable the new 'single procedure' for processing

applications, provided for in the International Protection Act 2015, to operate efficiently, once this legislation is commenced. The Working Group highlighted that, if the State fails to adequately resource the authorities which have responsibility for processing claims, it will incur far higher costs in accommodating and supporting applicants over the long term. The excessive delays, with all the associated human costs, that have characterised the current system will continue.

Resources will also be required for additional infrastructure and processing capacities needed to implement Irish commitments under EU resettlement and relocation programmes. These must be *additional* resources, not a re-allocation from existing budgets, if Ireland is to be able to meet its current and future obligations to all those who seek refuge in this state, regardless of how they have entered the country.

As large numbers of people have continued to seek access to Europe, the response has increasingly been one aimed at excluding entry. EU Member States have reintroduced internal border controls and the main thrust of the EU–Turkey agreement, concluded in March 2016, is to ‘stem the flow’ of people seeking refuge in Europe, clearly denying the right to seek asylum through excluding access to the territory. This is compounded by the enforced removal from Greece of people seeking refuge and their return to Turkey, a state with a poor human rights record.

In this context, Ireland has a moral obligation to try to do more than comply with failing EU initiatives. This state could choose to voluntarily resettle vulnerable refugees from countries bordering Syria, such as Lebanon and Jordan. Ireland could, for instance, progressively increase its resettlement commitments towards 22,000 places – which would represent just 0.5 per cent of the country’s population.

The time for action is now.

***John Guiney SJ is Director of the Jesuit Centre for Faith and Justice.***

***Eugene Quinn is Director of Jesuit Refugee Service Ireland.***

# Time to Act: Implementation of the Report of the Working Group on the Protection Process

*Eugene Quinn*

## Introduction

The *Statement of Government Priorities 2014–2016*, which was issued by the Fine Gael and Labour Party Coalition Government in July 2014, included a commitment to ‘treat asylum seekers with the humanity and respect that they deserve ... [and] reduce the length of time the applicant spends in the system ...’.<sup>1</sup>

This commitment came against a background where the Irish system of Direct Provision for asylum seekers was featuring regularly in the media, with reports from around the country of protests, enforced transfers, hunger strikes and calls for the closure of accommodation centres. The growing concern about the Direct Provision system was encapsulated in a comment by the then Minister of State with special responsibility for New Communities, Culture and Equality, Aodhán Ó Ríordáin TD, who said: ‘None of us can stand over it, it’s just not acceptable’.<sup>2</sup>

In mid-September 2014, a roundtable consultation was held by the government ministers with responsibility for the operation of the asylum and immigration systems in Ireland to hear the concerns and analyses of NGOs working in the area. Subsequently, in October, the Government established a Working Group which was asked to undertake the first comprehensive review of the protection process, including the Direct Provision system introduced in 2000, and report back to Government with recommendations.<sup>3</sup>

This article describes the approach of the Working Group, including the consultation process undertaken; the main findings and recommendations put forward in the Working Group’s Final Report, published in June 2015, and the response from Government since then in terms of implementation of key recommendations.

## Membership and Mandate

The membership of the Working Group on the Protection Process comprised:

- Representatives of NGOs concerned with asylum and refugee issues – Irish Refugee

Council;<sup>4</sup> Jesuit Refugee Service Ireland; NASC; SPIRASI; the Children’s Rights Alliance;

- Representatives of those seeking protection – the Core Group of Asylum Seekers and Refugees;
- A representative of the United Nations High Commissioner for Refugees (UNHCR);
- A representative of each of the following statutory bodies: Office of the Refugee Applications Commissioner; Refugee Appeals Tribunal; Office of the Attorney General; Health Service Executive; Tusla – Child and Family Agency;
- Representatives from all relevant government departments.

The non-affiliated members of the Group were: Tim Dalton, Dan Murphy and Dr. Ciara Smyth and the Group was chaired by retired High Court judge, Justice Bryan McMahon.<sup>5</sup>

As noted, one of the NGOs represented on the Working Group was the Jesuit Refugee Service Ireland (henceforth referred to as JRS Ireland). In light of its mission ‘to accompany, advocate and serve’, JRS Ireland has been supporting asylum seekers living in Direct Provision since 2002 and its services now include regular outreach and support to residents of thirteen Direct Provision centres, located in Dublin, Kildare, Portlaoise, Meath, Clare and Limerick.

## Terms of Reference

The terms of reference of the Working Group on the Protection Process were:

*... to recommend to the Government what improvements should be made to the State’s existing Direct Provision and protection process and to the various supports provided for protection applicants; and specifically to indicate what actions could be taken in the short and longer term which are directed towards:*

- (i) *improving existing arrangements in the processing of protection applications;*

- (ii) *showing greater respect for the dignity of persons in the system and improving their quality of life by enhancing the support and services currently available;*

*ensuring at the same time that, in light of recognised budgetary realities, the overall cost of the protection system to the taxpayer is reduced or remains within or close to current levels and that the existing border controls and immigration procedures are not compromised.*<sup>6</sup>

Crucially – and, for some, controversially – the terms of reference were restricted to identifying potential improvements to the existing system, thus excluding consideration of alternatives to Direct Provision for the reception and accommodation of people seeking protection in the state.

The Working Group adopted a thematic approach, appointing three sub-groups (see Table 1 below).<sup>7</sup> These sub-groups met on thirty-eight occasions, submitting recommendations to plenary meetings of the Working Group, which itself met eight times. Deliberations at both levels were informed by academic research, commentary from national and international bodies, submissions from interested parties, the experience of Working Group members and, most importantly, the views of people in the protection process.

As part of its consideration of proposals for reform, the Working Group undertook a detailed costings exercise, by developing a financial model which projected the overall cost of the protection system, including case processing and costs associated with reception and accommodation in Direct Provision, over a five-year period. Estimates were made of the savings or additional costs expected to arise from the implementation of each recommendation put forward.

## Voices of Asylum Seekers

It is self-evident that the voice and experience of asylum seekers should inform any proposals for the improvement of the protection system. The Working Group therefore undertook an extensive consultation process, which involved:

- A call for written submissions from adult and child residents of Direct Provision accommodation centres;
- Ten regional consultation sessions with 381 residents, and visits to fifteen accommodation centres;
- Consultations with particular groups of people in the system, including victims of torture, victims of trafficking and of sexual violence, members of the LGBT community;
- An invitation to participants at the ten regional consultation sessions to nominate a person to make an oral submission to the full Working Group; nine of the sessions nominated a representative.<sup>8</sup>

The Working Group's consultations highlighted a wide range of concerns, including many which had previously been the focus of discussion and research: the detrimental impact of the system on mental health;<sup>9</sup> the adverse effects on family life;<sup>10</sup> inadequacies in relation to the food available to residents in centres, including lack of choice and of access to ethnic food preferences;<sup>11</sup> and the prevalence of social exclusion.<sup>12</sup>

However, the clearest and most consistent message emerging from the consultations was that the principal source of distress and frustration for residents in Direct Provision was the length of time they had to spend in the system.<sup>13</sup>

**Table 1: Thematic Approach**

<i>Theme 1</i>	To suggest improvements to Direct Provision (i.e. living conditions while in designated centres) aimed at showing greater respect for the dignity of persons in the system and improving their quality of life.
<i>Theme 2</i>	To suggest improvements to the supports (e.g. financial, educational, health) for protection applicants aimed at showing greater respect for the dignity of persons in the system and improving their quality of life.
<i>Theme 3</i>	To suggest improvements to existing arrangements for the processing of protection applications with particular regard to the length of the process.



One resident noted:

*What could be said to be wrong with the system is, in one way or another, directly linked to the length of time spent in it.*<sup>14</sup>

Another said:

*Ten years later I still live in the same bed, in the same shared room, of the same direct provision centre – a full decade spent in limbo.*<sup>15</sup>

The significance of the length of time issue, which emerged so clearly in the Working Group's consultation, was consistent with the experience of JRS Ireland. As outlined in its 2014 Working Paper, *No End in Sight – Lives on Hold Long Term in the Asylum Process*, the most negative aspects of life in Direct Provision arise from or are exacerbated by the excessive length of time that applicants spend in the system, and include a range of detrimental impacts on children, family life and relationships, the rendering obsolete of skills and qualifications, and the creation of dependency.<sup>16</sup>

### Length of Time Data

To gain a picture of the length of time applicants had been in the system, the Working Group conducted an analysis of data relating to 16 February 2015.

This analysis covered data in respect of applicants in the protection process (that is, persons who have applied for refugee status or subsidiary protection); applicants in the 'leave to remain' process (those who have been unsuccessful in their application for protection but whose eligibility for 'leave to remain' is yet to be determined); the deportation order stage (where the protection process and 'leave to remain' stages have been concluded and a deportation order has been issued); and the judicial review process (where an individual has applied to the courts for judicial review of how their application has been handled).

The analysis of the data for 16 February 2015 showed that there were, in all, 7,937 applicants, of whom 4,350 (almost 55 per cent) had been in the system for over five years. The numbers in the different stages of the application process were as follows:

- 3,876 persons (49 per cent) were in the protection process, of whom almost one-third had been in the system for more than five years;

- 3,343 (42 per cent) were in the 'leave to remain' process, of whom three-quarters had been in the system for more than five years;
- 718 (9 per cent) were at the deportation order stage, of whom 88 per cent had been in the system for over five years;
- Approximately 1,000 people from among those in the three groups above were involved in judicial review proceedings. When a person is involved in a judicial review, the further processing of their application is suspended pending the outcome of the review.<sup>17</sup>

Of the 7,937 applicants, 3,607 (45 per cent) were living in Direct Provision accommodation centres; 1,480 people in this group (42 per cent) had been in the system for more than five years.<sup>18</sup>

More than half of all applicants (4,330 persons) were living outside Direct Provision; in the case of 66 per cent of this group, five years or more had elapsed since their initial application. Some of the people in this group were believed to have left the state.<sup>19</sup>

### Addressing the Length of Time Issue

In considering the length of time issue, the Working Group took into account a range of matters, including:

- *the views of persons in the system;*
- *the particular situation of children and vulnerable persons;*
- *the need to deliver efficient and effective solutions that can be easily understood;*
- *the need to maximise existing resources and the need for additional resources;*
- *the need to maximise the impact of the solutions proposed on those in the system for lengthy periods; and*
- *the consequences of the solutions proposed for those in the system, the system itself and the integrity of the protection process.*<sup>20</sup>

The finally agreed recommendation of the Working Group in regard to the length of time question was that the principle be adopted that no person should be in the system for more than five years.<sup>21</sup> Essentially, it was recommended that those now in the asylum process for longer than this would be granted a protection status or leave to remain within six months, subject to certain conditions.<sup>22</sup> It was

estimated that 3,350 people, including 1,480 people living in Direct Provision, would benefit from this proposal.

The Working Group recommended that a start date for the implementation of this solution should be set as soon as possible. It further recommended that at the close of the designated six-month period the authorities should commit to a review of how the solution had operated in practice, and then prioritise the remaining ‘legacy cases’, that is, those of over four years’ duration, then those of over three years’ duration, and so on.

The proposed ‘long stayer’ solution addresses the primary concern articulated by those people for whom the Working Group was established. It is an approach that is likely to be perceived positively by the general public and by several international agencies which, over a number of years, have been critical of Ireland’s asylum system – and, in particular, of the length of time many people spend in that system – and it would thus be a step towards repairing reputational damage. In addition, the implementation of such a measure would be recognition of the reality that in Ireland, as in Europe generally, the majority, if not all, ‘long stayers’ are ultimately never removed from the state’s territory.<sup>23</sup>

A further consideration is that the exit of those longest in the process would make physical room for new asylum applicants whose arrival is already putting pressure on accommodation resources.<sup>24</sup> It would also help create administrative space to enable a smooth transition towards the operation of the long-awaited ‘single procedure’ – that is, a procedure which provides for an integrated assessment of whether an application meets the requirements for being granted refugee status, or subsidiary protection status, or leave to remain, as opposed to a sequential determination process, which requires each stage to be completed before the next can begin.

## Recommendations

The Final Report of the Working Group, published on 30 June 2015, set out a total of 173 recommendations which were fully costed. Significantly, each recommendation was ultimately agreed to by all members of the Working Group, including the representatives of government departments and statutory agencies.<sup>25</sup> This consensus approach was adopted to effect the removal of any legal or operational barriers to

implementation and to facilitate the speedy roll-out of the measures proposed. The Working Group’s key recommendations included:

- Implementation of the proposed ‘long stayer’ solution for people in the system for five years or more.
- Creation of a transition taskforce to support implementation of the ‘long stayer’ solution.
- The enactment of the International Protection Bill and the implementation of the single application procedure as a matter of urgency.
- The inclusion in the International Protection Bill of a right to work for those asylum seekers who are awaiting a ‘first instance’ decision for nine months or more, and who have cooperated with the protection process; this provision should be commenced when the proposed ‘single procedure’ is operating efficiently.
- Increasing the weekly allowance paid to those in Direct Provision from the then current rates of €19.10 for an adult and €9.60 for a child. It was proposed that the rate for an adult should be increased by €19.64. The rationale for this was that, when originally introduced in 2000, the allowance represented 20.83 per cent of the adult rate under Supplementary Welfare Allowance but by 2015 it represented only 10.27 per cent. Restoring the original ratio would mean that the allowance would be set at €38.74 and this was recommended by the Working Group. With regard to the allowance for children, it was recommended that this be increased to €29.80 per child per week, bringing it into line with the sum paid under Supplementary Welfare Allowance in respect of a dependent child. Part of the rationale for the recommended increases was that adults in Direct Provision do not have the right to work and, since 2004, parents are not entitled to receive Child Benefit for dependent children.
- Providing all families with access to cooking facilities (whether in a self-contained unit or through use of a communal kitchen) and their own private living space in so far as practicable.
- Extension of the mandate of the Ombudsman, and of the Ombudsman for Children, to include complaints relating to ‘services provided to residents of Direct Provision centres’, and ‘transfer decisions following a breach of the House Rules’.
- Establishment of a standards-setting committee for Direct Provision accommodation.

It is important to note that the costings exercise undertaken by the Working Group demonstrated that the savings which would arise from resolving the situation of those in the system for five years or more, and from eliminating delays in the determination process, would outweigh the costs associated with implementing the Group's recommendations for improved living conditions in Direct Provision centres and enhanced supports for protection applicants (see Table 2 below).

## Progress in Implementation

### 'Long Stayer' Solution

Since the publication of the Working Group's report in June 2015, there has been no official statement from Government regarding the Group's recommendations on the 'long stayer' issue. Nevertheless, there appears to be a *de facto* acceptance at official level of the principle that people should not be in the protection application system for more than five years. This is reflected in an increase in the number of applicants of this duration being granted leave to remain. During 2015, approximately 1,400 people who had been longest in the system had their situation resolved by being given leave to remain – in contrast to just over 700 in 2014.

Despite this progress, it is clear that there still remains a significant challenge to ensure that *all* those the Working Group estimated would benefit from its 'long stayer' solution – a total of 3,350 individuals – will have their situation resolved. This can only be achieved in a timely fashion if the

recommended additional resources are provided in full.

It needs to be remembered also that over a year has now elapsed since the date (16 February 2015) in respect of which the Working Group analysed data to establish the length of time applicants had been in the process. The 684 people whose application was then of four years' duration,<sup>26</sup> are now more than five years in the system and are thus eligible for the 'long stayer' solution.

### Single Procedure

Having been passed by the Oireachtas, the International Protection Bill 2015 was signed into law by President Michael D. Higgins on 30 December 2015 and is expected to be commenced in the latter part of 2016. The Act's provision for a 'single procedure' for processing applications for protection is a significant and welcome development. However, there are grounds for concern that the reformed procedure may not be successful in the key task of expediting the processing of new applications, since the system will have to cope not only with the marked increase in the number of new applications for protection, but will have to take responsibility for transferring over and dealing with cases pending at the time the new system comes into operation.

On 31 December 2015, the Office of the Refugee Applications Commissioner (ORAC), the body responsible for making 'first-instance' decisions, had 2,582 cases in hand, more than three

**Table 2: Projected savings/costs arising from measures recommended by the Working Group on the Protection System**

Projected savings yielded by:	2015 €m	2016 €m	2017 €m	2018 €m	2019 €m	2015–2019 €m
Long Stayer Solution and Single Procedure	5.4	23.9	39.5	55.1	70.5	194.5
Less Costs of Improving Protection Process	-0.9	-3.1	-3.2	-3.3	-3.5	-14.0
Less Costs of Improving Direct Provision	-5.1	-9.4	-13.4	-18.3	-22.8	-69.1
Less Costs of Improving Applicant Supports	-9.9	-13.5	-8.6	-9.5	-10.9	-52.4
Net Projected Savings/Costs	-10.5	-2.1	14.4	24.0	33.3	59.1
Cumulative Projected Savings/Costs	-10.2	-12.6	1.7	25.7	59.1	

Source: Working Group on the Protection Process, *Final Report*, p. 253.

times the number (743) outstanding at the end of 2014. The median case-processing time doubled during 2015, increasing from 15 weeks to nearly 30 weeks. Yet, during 2015, the number of cases processed to completion by ORAC increased significantly – rising from 1,060 in 2014 to 1,552. The delays in the system reflect the sharp rise in new applications for asylum since 2013, when the total was 946. In 2014, the number of new applications was 1,448, and in 2015 it was 3,276 (that is, an increase of 246 per cent since 2013). In the first two months of 2016, there were 406 new applications.<sup>27</sup>

In addition to pending cases in the ‘first instance’ stage of the process (that is, cases being dealt with by ORAC), the new single procedure will also have to deal with outstanding refugee appeal cases from the ‘second instance’ stage. On 11 March 2016, the Refugee Appeals Tribunal, the body responsible for dealing with such cases, had 1,070 appeals pending.<sup>28</sup>

As of early 2016, therefore, there would be in excess of 3,600 cases (that is, the combined totals from ORAC and the Refugee Appeals Tribunal of cases pending) to be transferred to the new Office of the Chief International Protection Officer. It is imperative that this considerable backlog is fully dealt with prior to the commencement of the single procedure. Otherwise, these cases will have to be transferred over into the single procedure system, with the result that the processing of new applications will be delayed. The inevitable outcome will be the re-emergence under the new system of the excessive delays that have characterised the protection process for well over a decade.

### **Resources**

In September 2015, the Department of Justice and Equality stated in a Press Release that the Government had agreed that ‘an additional budget allocation’ would be made available to deal with demands on the asylum and immigration systems, including ‘backlog cases identified in the recent report of the Working Group on the Protection System’.<sup>29</sup>

However, the delays in implementing the ‘long stayer’ solution and the evidence of increasing backlogs in the processing system, as outlined above, highlight that there remains a need to greatly enhance the capacity of the various authorities charged with making decisions on protection

applications. The Working Group provided an outline of the additional resources required by the decision-making bodies and emphasised that in the absence of extra resources the anticipated benefits of the single procedure in terms of speeding up the processing of applications would not be realised, particularly in a context of growing numbers of new applications.<sup>30</sup>

As well as highlighting the need for additional resources for the processing system, the Working Group demonstrated that investing in decision-making not only yields benefits in reducing the time spent in the system, but also makes financial sense. Its costings exercise showed that each year a person remains in the system gives rise to accommodation costs of, on average, almost €11,000 per applicant. The cost of decision-making is a fraction of this.<sup>31</sup>

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The principal conclusion is that if the State fails to adequately resource the status determination process it will incur far higher costs in accommodating and supporting applicants over a prolonged period. However, it is asylum applicants and their families who will pay the greatest price, in terms of the long-term human costs of excessive delays in the process.

### **Transition Task Force**

A key issue for people whose application has been successful is the transition from the protection process to becoming part of mainstream Irish society, in terms of accommodation, employment, education, access to services and participation in community life. The Working Group noted that different groups (for example, those granted status after spending years in the system and those relatively newly arrived in Ireland whose application may be processed more speedily under the new single procedure) will face different transition issues and have different needs.

The Working Group recommended that, as a matter of priority, the Minister of State for New



Communities, Culture and Equality ‘should convene a taskforce of cross-departmental representatives, State agencies and relevant NGOs’ to address the wide range of transition needs of those granted status, warning that ‘in the absence of a consistent plan for the legacy group, in particular, they may not be able to leave Direct Provision’.<sup>32</sup>

In July 2015, the Minister of State announced the establishment of a Government Task Force to examine the transition needs of those who had been given protection status but continued to live in Direct Provision.<sup>33</sup> The Transition Task Force has published a guide to living independently and has developed information sessions on transition to be delivered to Direct Provision residents who have been granted status.

Against the backdrop of a national housing crisis, securing accommodation remains the greatest problem facing people who, having obtained status, are entitled to leave Direct Provision accommodation. In a submission to the Transition Task Force, JRS Ireland advocated that there should be more structured support in regard to housing for this group, and recommended the adoption of the Homeless Action Team model as an appropriate template for assisting vulnerable long-term residents exiting Direct Provision.<sup>34</sup> To date, the Task Force has not recommended that specialised support in regard to finding suitable accommodation in the community be offered to people with status exiting Direct Provision.

### ***Right to Work***

As already noted, the Working Group recommended that applicants for protection should be able to access the labour market if still awaiting a decision after nine months, once the single procedure was operating effectively. A particularly disappointing feature of the International Protection Act 2015 is the fact that it does not include any provision in respect of this issue. Ireland therefore remains the only Member State of the EU, apart from Lithuania, which does not provide for a right to work at any stage during the application process.<sup>35</sup>

### ***Direct Provision Conditions and Supports***

Regrettably, key recommendations of the Working Group regarding conditions in Direct Provision centres – namely, access to cooking facilities and additional living space for families – have not been implemented. The increase in new applications during 2015, combined with the slow rate of implementation of the ‘long stayer’ solution, have

placed pressure on bed spaces and resulted in new Direct Provision centres being opened.

In January 2016, the Government announced the first increase in the Direct Provision weekly payment since its introduction in 2000. The allowance for each child was raised by €6.00 to a rate of €15.60 per week, but this is far short of the rate of €29.80 recommended by the Working Group.<sup>36</sup> The adult weekly allowance has not been increased, however, and so remains at €19.10.

As already noted, one of the recommendations of the Working Group was that the mandate of the Ombudsman, and of the Ombudsman for Children, should be extended to include complaints from residents in Direct Provision. In February 2016, the holders of the two Ombudsman offices issued a public statement welcoming the Minister for Justice’s ‘commitment in principle’ to extend their remit.<sup>37</sup> It is vital that the measures necessary to implement this commitment will be put in place at the earliest opportunity.



Migrants in inflatable boat between Turkey and Greece, October 2015  
iStock Photo ©Joel Carillet

## **Conclusion**

The announcement by the Government in 2014 that it was establishing a Working Group to undertake a systematic review of the protection process, including the system of Direct Provision, was a significant first step towards reform of an area of public policy that had become the subject of increasing concern.

The Working Group was unanimous in its opinion of the importance and urgency of taking action to resolve the situation of thousands of people, a third of them children, living in limbo for years in the protection application system. It put forward fully-costed recommendations, which respected existing immigration and border controls, to address this.

Equally, it emphasised the need to ensure that lengthy backlogs do not again develop in the

system. It stressed too the importance of taking immediate steps to improve living conditions and supports for people in Direct Provision centres.

Since the Working Group reported in June 2015 there has been progress with regard to resolving the situation of those whose applications have been longest in the system, although considerable work remains to be done. In addition, long-awaited legislation to underpin reform of the protection process has been enacted in the International Protection Act 2015. Obviously, these are welcome developments. However, there is also emerging a picture of increased delays and backlogs in dealing with applications at the earlier stages of the process. This reflects a significant increase in new applications since 2013. It also reflects a failure to allocate the level of additional resources identified by the Working Group as necessary to enable the full and speedy implementation of an appropriate solution for those longest in the system and to address processing backlogs.

A failure to implement the key recommendations in the Working Group's report will mean that the lengthy waiting times and the unsuitable living conditions which prompted the establishment of the Working Group will continue. Above all, a failure of implementation will inevitably impose heavy costs on the individuals, families and children living for prolonged periods in Direct Provision centres. The toll of spending years with 'no end in sight' was summed up in a comment made by one protection applicant during the Working Group's consultation: 'As we kill the time, the time kills us'.

In light of the evidence from protection applicants assembled by the Working Group during its consultations, and given that all its members, including representatives of government departments and statutory agencies, agreed to the Group's final report, there are no justifiable reasons for delaying the implementation of its key recommendations. The time to act is now.<sup>38</sup>

## Notes

1. Department of the Taoiseach, *Statement of Government Priorities 2014–2016*, Dublin, 2014. ([http://www.taoiseach.gov.ie/eng/Work\\_Of\\_The\\_Department/Programme\\_for\\_Government/](http://www.taoiseach.gov.ie/eng/Work_Of_The_Department/Programme_for_Government/))
2. Christian Finn, "'Direct Provision': None of us can stand over it, it's just not acceptable", *thejournal.ie*, 23 July 2014. (<http://www.thejournal.ie/direct-provision-reform-1586753-Jul2014/>)
3. Department of Justice and Equality, 'Ministers Fitzgerald and O Riordáin announce composition of Working Group to examine improvements to the Protection process and the Direct Provision system', Press Release, 13 October 2014. (<http://www.justice.ie/en/JELR/Pages/PR14000280>)
4. Sue Conlan, CEO, Irish Refugee Council tendered her resignation from the Working Group as of 26 March 2015.
5. Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report*, Dublin: Department of Justice and Equality, 2015, p. 28. (<http://www.justice.ie/en/JELR/Pages/Report-to-Government-on-Improvements-to-the-Protection-Process-including-Direct-Provision-and-Supports-to-Asylum-Seekers>)
6. *Ibid.*, p. 12.
7. *Ibid.*, par. 11, pp. 29–30. See also Appendix 2, 'Membership of the Thematic Sub-groups', pp. 262–64.
8. *Ibid.*, par. 19, p. 15.
9. Magzoub Toar, Kirsty K. O'Brien and Tom Fahey, 'Comparison of Self-Reported Health and Healthcare Utilisation between Asylum Seekers and Refugees: An Observational Study', *BMC Public Health*, 2009, 9: 214.
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18. *Ibid.*, pars. 3.10–3.11, p. 66.
19. *Ibid.*, par. 3.13, p. 66.
20. *Ibid.*, par. 3.125, p. 86.
21. *Ibid.*, par. 25, p. 16; par. 3.126, p. 86.
22. These conditions are outlined in the Report of the Working Group, pars. 3.129–3.130, p. 87.
23. In reports in 2007 and 2010, the Jesuit Refugee Service Europe highlighted the phenomenon of non-returnable forced migrants, including unsuccessful asylum seekers, who had exhausted all avenues for obtaining a legal right to remain. See: *We are Dying Silent: Report on Destitute Forced Migrants*, Brussels, JRS Europe, 2007; *Living in Limbo – Forced Migrant Destitution in Europe*, Brussels: JRS Europe, 2010.
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36. See: Mags Gargan, 'Child Direct Provision payment increase 'paltry'', *The Irish Catholic*, 14 January 2016.
37. 'Commitment to allowing residents in Direct Provision to make complaints to Ombudsman offices welcomed', Press Release issued jointly by the Ombudsman for Children and the Office of the Ombudsman, 4 February 2016. (<https://www.ombudsman.gov.ie/en/News/Media-Releases/2016-Media-Releases/Direct-Provision-complaints.html>)
38. Six groups which were represented on the Working Group have come together to campaign for the implementation of the key recommendations of the Working Group's Final Report. These groups are: Core Group of Asylum Seekers; Children's Rights Alliance; JRS Ireland; NASC; SPIRASI; UNHCR. They have established a website, 'Time to Act', which enables organisations to endorse the call for action to implement the recommendations of the Working Group (<http://www.timetoact.ie/>).

***Eugene Quinn is Director of Jesuit Refugee Service Ireland and was a member of the Working Group on the Protection Process.***

# The EU Refugee and Migrant Crisis: A Shared Responsibility

David Moriarty

## Introduction

*We cannot allow the Mediterranean to become a vast cemetery! The boats landing daily on the shores of Europe are filled with men and women who need acceptance and assistance. (Pope Francis)<sup>1</sup>*

During 2015, over one million migrants and asylum seekers risked crossing the Mediterranean Sea in unsafe boats in an attempt to enter the territory of the European Union. For many, however, this hazardous journey led not to the possibility of a new life in a place of safety and opportunity but tragically to their death: over 3,700 men, women and children, including in some cases several members of the same family, died by drowning while attempting to cross into Europe.

Asylum and immigration systems categorise people seeking entry from other states as ‘asylum seekers’, ‘refugees’, ‘forced migrants’, ‘economic migrants’. Yet it is important to remember that first and foremost these are people – people who share the same human condition that we do, who share the same hopes and dreams of a better life for themselves and their families. Behind the numbers and statistics are people with names and faces.

The response to the ongoing migrant and refugee crisis in Europe raises questions about the value systems which underpin European societies and the principles which the European Union espouses. Defining an appropriate and effective response is complicated by competing political narratives, the nature of forced migration and the scale of human need. European leaders face significant political difficulties in framing a coherent policy to address the immediate humanitarian needs arising out of the crisis as well as the structural causes underlying it.

The spontaneous gathering of German citizens at train stations to applaud arriving refugees, and the Uplift campaign where thousands of people in Ireland pledged an offer of accommodation for refugees,<sup>2</sup> are examples of positive action being taken by communities on the ground in response to the crisis. On the other hand, the assaults in Cologne on the eve of 1 January 2016 highlight

unacceptable behaviours and challenging attitudes among some sections of the recently-arrived refugee and migrant population – behaviours and attitudes to which host communities have to respond appropriately. In the long term, there exists the challenge of integration: how to ensure that all people living in EU Member States, long-term residents and those recently-arrived, can live together in dignity and mutual respect and participate fully in the life of the community, irrespective of their colour, creed or culture.

## Statistics on Forced Displacement

The term ‘forcibly displaced’ refers to people who have been forced to move from their habitual place of residence because of conflict, generalised violence, persecution or other human rights violations. It includes people who have been displaced from their home but continue to live within the borders of their own state, and those who have crossed into another state where they have applied for asylum or have been accepted as a refugee or granted some other form of protection.

There has been a marked upward trend in the number of forcibly displaced persons in recent years. Data from the United Nations High Commissioner for Refugees (UNHCR), presented in Table 1 (overleaf), show that the total number of people worldwide officially recorded as displaced grew from 42.5 million in 2011 to 59.5 million in 2014. The number ‘newly displaced’ in 2014 was more than three times greater than in 2011. Table 1 also shows the increases in specific categories of displaced persons: refugees, including people in a ‘refugee-like situation’; asylum seekers; and internally displaced people. (Also included in the UNHCR totals for displacement – but not shown in Table 1 – are figures for a number of other specific categories of displaced persons: ‘stateless persons’; ‘returned refugees’; ‘returned internally displaced persons’; ‘others of concern’.) Statistics for the overall number of displaced persons in 2015 have not yet been published but a mid-year report by the UNHCR stated: ‘As the number of refugees, asylum seekers and internally displaced persons (IDPs) continued to grow in 2015, it is likely that this figure has far surpassed 60 million.’<sup>3</sup>



**Table 1: Global Displacement 2011– Mid-2015 (millions)**

	2011	2012	2013	2014	mid-2015
<i>Displaced persons worldwide</i>	42.5	45.2	51.2	59.5	>60.0
<i>Newly displaced during this time (estimated)</i>	4.3	7.6	10.7	13.9	5.0
<i>Refugees*</i>	10.4	10.5	11.7	14.4	15.1
<i>Asylum seekers</i>	0.895	0.928	1.2	1.8	0.993
<i>Internally displaced persons</i>	15.5	17.7	33.3	38.2	>34.0

**Source:** UNHCR, *Statistical Yearbooks* 2011, 2012, 2013 and 2014, Geneva: UNHCR; UNHCR, *Mid-Year Trends June 2015*, Geneva: UNHCR, December 2015.

\*These figures refer to refugees under the mandate of UNHCR and do not include Palestinian refugees who are registered with UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East). There were 4.8 million such Palestinian refugees in 2011 and 5.1 million in 2014.

### European Union

The number of first-time applicants for asylum in EU Member States has been rising since 2008 but, as Table 2 below shows, the increase since 2013 has been very significant. During 2015, there was an unprecedented rise in applications, with over 1.2 million people claiming asylum in the EU – over three times the number in 2013 and more than double the number in 2014.<sup>4</sup> In the first two months of 2016, there were a further 168,175 first-time asylum applications.<sup>5</sup>

### Transit Routes into the EU

A distinguishing feature of the current European refugee crisis is the number of people prepared to risk their lives to reach Europe by attempting the

Mediterranean Sea crossing. Despite the hazardous nature of this journey, which often involves passage on grossly overcrowded vessels, including rubber dinghies and boats with unreliable engines, the number attempting to cross the Mediterranean has grown exponentially since 2010 (see UNHCR data, presented in Table 3 below). The number of refugees and migrants making this journey more than quadrupled between 2014 and 2015 – rising from just under 220,000 to over one million. A further 170,000 people arrived in Europe by sea during the first three months of 2016.<sup>6</sup>

For asylum seekers and migrants, there are two main ways of entering Europe: via a Central Mediterranean route and via an East Mediterranean/

**Table 2: First-Time Applications for Asylum in the EU, 2010–2015**

	2010	2011	2012	2013	2014	2015
<i>First-Time Asylum Applications</i>	206,880	263,160	278,280	372,855	562,680	1,255,685

**Source:** Eurostat, 'Asylum and First Time Asylum Applicants by Citizenship, Age and Sex, Annual Aggregated Data'.

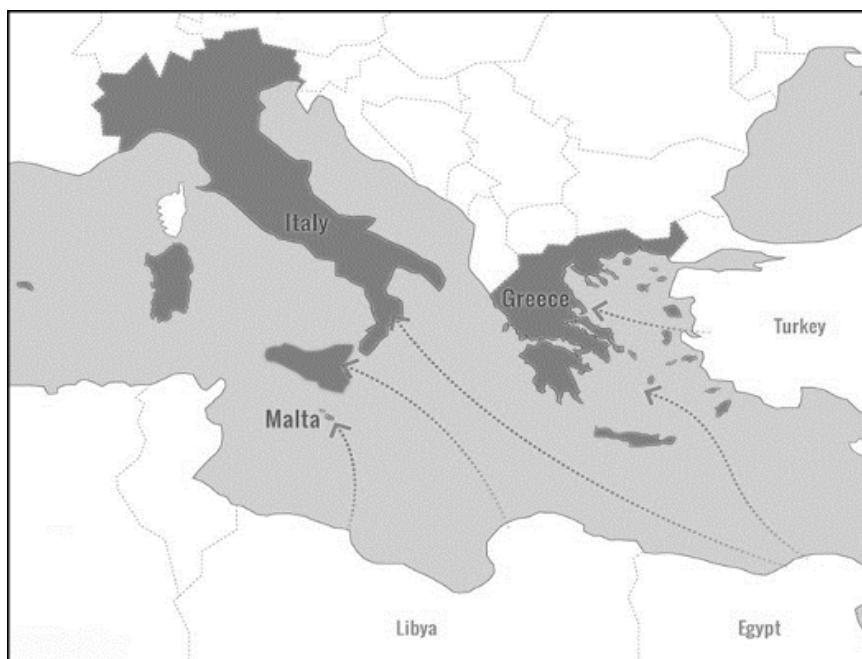
**Note:** In 2011 and 2012, the EU consisted of 27 Member States; this increased to 28 with the accession of Croatia in 2013.

**Table 3: Sea Arrivals to the EU, 2010–2015**

	2010	2011	2012	2013	2014	2015
<i>Arrivals by Sea</i>	9,700	70,000	22,500	60,000	219,000	1,015,078

**Source:** *Refugees/Migrants Emergency Response – Mediterranean*, Information Sharing Portal hosted by UNHCR

## Map 1: Mediterranean Crossings



Source: UNHCR

Western Balkan route. Access to these routes often necessitates relying on smugglers, traffickers and other criminal networks.

The Central Mediterranean route encompasses the flow of people departing from North African countries – with Libya acting as a focal point – and arriving in Italy and Malta (see Map 1 above). The main groups traversing this route in 2015 were Eritrean, Nigerian and sub-Saharan nationals.

The East Mediterranean/Western Balkan passage involves first of all a sea crossing from Turkey onto one of the Greek islands – a distance of just a few kilometres. Since the beginning of 2015, this crossing, which is utilised primarily by Syrian, Afghan and Iraqi nationals, has become the principal route into Europe. Its increased significance as an entry point is indicated in the fact that the numbers entering Greece in 2015 totalled 856,700, as compared to 43,500 in 2014.<sup>7</sup> In other words, 85 per cent of refugees and migrants arriving in Europe in 2015 came via the East Mediterranean. In the first three months of 2016, an additional 152,152 people arrived in Greece.<sup>8</sup>

The East Mediterranean/Western Balkan route in fact entails entering, then leaving, and subsequently coming back into European Union territory. The initial entry, onto one of the islands of Greece and from there onto the mainland, is followed by a land

route (the Western Balkan stage) from Greece through one of the former Yugoslav republics with the purpose of re-entering the EU. Originally, re-entry was via Hungary. However, following the huge increase in the number of people using this route in 2015, Hungary and then neighbouring states re-introduced border control measures. This culminated in a decision by the authorities in Macedonia in March 2016 to effectively close the country's border with Greece.

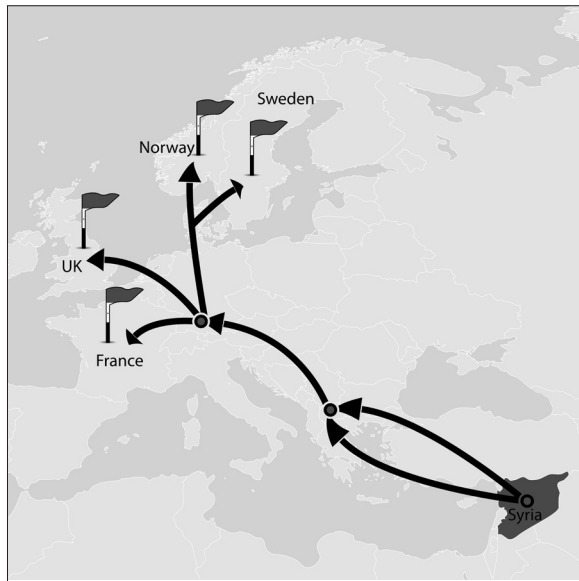
### Causal Factors

#### *Syrian Conflict*

The conflict in Syria has triggered one of the world's worst humanitarian crises since World War II and is the principal driver of the current increase in global refugee numbers. There are estimated to be 13.5 million people in need of humanitarian assistance within Syria itself and, to date, the conflict has resulted in the internal displacement of approximately 6.5 million people and the registration of 4.6 million people from Syria as refugees in neighbouring countries (mainly Lebanon, Jordan and Turkey).<sup>9</sup> It has been estimated that in excess of 250,000 men, women and children have lost their lives since the outbreak of violence in 2011.<sup>10</sup>

Despite mobilisation of over €5 billion in European aid for the region, and the efforts of numerous NGOs, including the Jesuit Refugee Service,<sup>11</sup> the ongoing violence, destruction and threats to life

## Map 2: Western Balkan Route



Syria to Northern Europe Route

iStock Photo ©evryka23

continue to force thousands of people to flee Syria and cross into other states in search of safety and refuge.

The arrival of huge numbers of refugees from Syria into neighbouring states, such as Turkey, Lebanon, Jordan and Iraq, has placed an unbearable strain on the resources of those countries and has stretched to the limit their capacity to manage inflows and offer refuge. These countries can no longer cope with the sheer numbers of people arriving and conditions in their refugee camps have been rapidly deteriorating. The situation in Lebanon is particularly acute: it is now host to 1.1 million refugees from Syria, roughly 25 per cent of the country's original population. Refugees feel compelled to move on. In the words of one person aiming to make the journey to Europe: 'It would be better to die with dignity crossing the sea than stay here [in Lebanon] and die slowly'.<sup>12</sup>

### ***Poverty and Instability in Africa***

The roots of the present crisis also include the political, social and economic 'push factors' driving people from Sub-Saharan Africa and other regions of the continent towards the North African departure points for Europe.

The major land routes that facilitate the migration flows towards North Africa are:<sup>13</sup>

- From Central and West Africa, mainly through Senegal, Mali, and Niger;

- From East African countries, in particular Somalia, Eritrea and Ethiopia, through Sudan and Chad.

From the early 1990s, thousands of people each year attempted to cross into Europe from North Africa, via the Central Mediterranean Sea route. Since the end of 2010, however, the political and economic upheavals occurring in Tunisia, Egypt and Libya have had the effect of greatly increasing flows to Europe.

In Libya, the political vacuum which followed the overthrow of General Muammar Gaddafi in 2011 resulted in the descent of the country into political instability, violence and lawlessness. A security void created by weak state institutions, in particular the military and police, has been exploited by militia who have assumed control of large swathes of Libyan territory, including sections of the coastline. In these circumstances, and given its strategic geographical position, Libya has become the focal point for sea crossings into Europe from North Africa, with smuggling and human trafficking operations growing exponentially.

In July 2014, a report by JRS Europe and Jesuit Migrant Service Spain drew attention to the particular situation in the area of Morocco adjoining Ceuta and Melilla, two Spanish-owned enclaves on the North African Mediterranean coast. Gaining access to either enclave means, in effect, entering EU territory and so hundreds of migrants have congregated close to their borders in the hope of being able to make the crossing. The reality is that few succeed and the vast majority suffer greatly in the harsh and even dangerous living conditions they are forced to endure.<sup>14</sup>

The net result of the multiple 'push factors' operating in many African nations is that hundreds of thousands of migrants and refugees have congregated in North African states with a common goal of gaining access to Europe and to a better life for themselves and their families. In 2014, Frontex, the European border agency, recorded 170,664 detections of illegal border crossings from a North African departure point and via the Central Mediterranean route; in 2015, a further 153,946 detections were recorded.<sup>15</sup> As long as the structural economic and political failings that drive forced migration across the African continent remain, the strong flow of people towards Europe along this route will continue.

## EU Response

The EU has been reactive and divided in its response to the migrants and asylum seekers who have been arriving at its borders and transiting Member States in ever-greater numbers in the past few years. The crisis has revealed a sharp divergence of views among Member States, and especially between Western and former Eastern bloc states, in relation to how the EU should respond. The terrorist attacks in Paris (November 2015) and Brussels (March 2016) have added a security dimension to EU policy considerations and have resulted in heightened concerns among politicians and the public about who might be travelling in refugee and migrant flows.

### *European Agenda on Migration*

During 2015, the EU agreed the 'European Agenda on Migration' as the primary mechanism for responding to the unfolding crisis. This initiative, originally announced in May<sup>16</sup> and enhanced in September 2015,<sup>17</sup> attempted to establish a framework for a comprehensive approach to migration management. Some of the concrete actions agreed were:

- In terms of *relocation* within the EU, 160,000 people in clear need of international protection were to be relocated over two years from the Member States most affected (Italy and Greece) to other EU Member States;
- In terms of *resettlement* from countries outside the EU, 22,000 recognised refugees from countries neighbouring Syria were to be resettled across EU Member States over two years;
- EU funding was to be mobilised in support of the Member States most affected by the arrival of large numbers of migrants;
- The EU was to triple its presence at sea;
- There were to be significant increases in aid for Syria and Africa.

However, this package of measures by the EU has so far been ineffective due to political differences and lack of sufficient commitment.

**Political Division:** The EU response has been largely characterised by division in approach and values. At the policy level, unilateral actions by Member States have deepened divisions. Germany initially adopted an open borders approach by effectively suspending the operation of aspects

of 'the Dublin system' – the mechanism for determining which EU Member State should be responsible for examining an application for asylum lodged within the EU – in order to facilitate access by Syrian refugees. In contrast, the authorities in Hungary and several other Member States have been steadily closing their country's borders by erecting fences to control the influx of refugees and migrants.

The depth of political division in the EU was starkly highlighted in September 2015 when decision by qualified majority was needed in order to force through mandatory relocation quotas, in the face of strong opposition from several Eastern European Member States. The values debate has centred on the cultural and religious traditions of arriving refugees and migrants. Some Member States have warned that the influx is a threat to the values, including those rooted in Christianity, which underpin European culture and politics. In sharp contrast, Pope Francis has argued that differences of race, national origin and religion can be a gift and a source of richness – something to welcome, not fear.

**Insufficient Scale:** The combined commitments under the EU relocation and resettlement schemes have the capacity to reach fewer than 100,000 persons annually over a twenty-four month period. This is not even a tenth of the refugees and migrants who crossed into Europe by sea during 2015. It is abundantly clear that, against the scale of human need represented by the current crisis, the agreed common response of the EU is severely inadequate and so responsibility will continue to be inequitably shared across Member States.

**Lack of Implementation:** In order to qualify for protection and relocation under EU programmes, individuals are required to first apply for asylum in either Italy or Greece. This, however, has not been happening. On the one hand, there are serious inadequacies in the reception infrastructure, services and registration procedures in pressure points. This is particularly so in the case of Greece, a country of just under 11 million people, which for several years has been experiencing enormous economic problems but which, because of its geographical location, has become the entry point for the great majority of refugees and migrants now arriving in Europe. On the other, there is the reality on the ground that many refugees seek to reach their preferred country of destination directly rather than risk a 'relocation lottery' which may result in



their being moved to a location other than the one preferred.

The fact is that, as of 15 March 2016, out of a proposed target of 160,000, just 937 people had been relocated. Only eighteen Member States had pledged to relocate people from Greece and nineteen Member States had pledged relocations from Italy. The total number of places formally pledged was just 3,723.<sup>18</sup>



Refugees waiting to cross the border between Greece and Macedonia, November 2015  
iStock Photo©verve231

## The EU–Turkey Agreement

On 18 March 2016, the European Council announced details of the EU–Turkey agreement, an escalation in Europe’s response to the crisis and one which includes the overarching aim of ending ‘irregular migration from Turkey to the EU’.<sup>19</sup>

The negotiation of this agreement was not an isolated event but rather the culmination of consistently closer cooperation on the migration issue between the EU and Turkey over the preceding months.

The three main components of the deal are:

- Return of all irregular migrants crossing from Turkey onto the Greek islands.
- Resettlement of Syrians on a one-for-one basis, i.e., for every Syrian returned to Turkey from one of the Greek islands, another Syrian from Turkey is to be resettled in the EU. In this process, priority will be given to Syrians ‘who have not previously entered or tried to enter the EU irregularly’.
- Prevention of the opening up of any new sea or land routes for illegal migration from Turkey into the EU.

At the time of writing, the full scope, impact and consequences of this agreement cannot be

adequately evaluated. However, there are significant legal, procedural and operational challenges facing the deal. In addition, serious questions remain about its compliance with EU law and, critically, the potential of the one-for-one procedure to act as an inherent barrier to accessing fair asylum procedures in the EU.

Returns to Turkey have already commenced.<sup>20</sup>

Another immediate consequence of the agreement has been the scaling back or suspension of services for refugees and migrants on Greek islands by a number of organisations, including UNHCR and NGOs such as Oxfam and Médecins Sans Frontières. They have taken this action on the basis of their concern that the system now in operation means that facilities on these islands have been effectively transformed into detention centres.

## Additional Policy Challenges

In the context of the failings in the EU response, two central planks of EU policy have been increasingly challenged.

Firstly, the Schengen Agreement, which underpins the free movement of people across EU internal borders, is under threat as a result of Member States reintroducing border controls.

Secondly, the Dublin system (i.e., the mechanism for determining which Member State is responsible for processing an asylum application) has proven unfit for purpose in ensuring an equitable distribution of responsibility across Member States.

In a Communication in April 2016 on proposed EU asylum policy reform, the European Commission identified two options for amending the Dublin system.<sup>21</sup> The first suggests preserving the existing apparatus and supplementing that system with a *corrective fairness mechanism* (similar to the EU relocation scheme) which could be triggered at times of mass inflows. The alternative proposal is to replace the existing structures by creating a new system, where allocation of responsibility would be determined on the basis of a distribution key (according to a Member State’s size, wealth, etc.).

Ultimately, fundamental reform of the Dublin System is unavoidable, if there is to be a more equitable sharing of responsibility for the reception of those seeking protection, for the determination of protection applications, and for the integration of those who remain in Europe. The options outlined by the European Commission make reference to

expressions of solidarity, to taking into account the economic strength and capacity of Member States, and to the need for emergency mechanisms at times of crisis. However, if any new structures are to operate efficiently they must not only secure the agreement of Member States but also, and critically, foster the trust and cooperation of asylum applicants and address the coercive dimensions associated with the Dublin system. A study for the European Parliament, published in 2015, highlighted that avoiding excessive coercion of asylum seekers and refugees is key to ensuring workable asylum systems and effective mechanisms for allocating responsibility between states.<sup>22</sup>

Finally, there is need to acknowledge that the lack of safe and legal ways of entering Europe (such as enhanced resettlement, family reunification, humanitarian visas and ‘refugee friendly’ student and labour market schemes) is a major factor influencing the huge increase in the number of asylum seekers attempting perilous Mediterranean Sea crossings.

There are also cohorts of people seeking to enter Europe who do not qualify for international protection but are nevertheless deserving of refuge, including those forcibly displaced by dire poverty, environmental degradation or other life-threatening circumstances. Thus, in addition to increasing safe and legal routes to enable people seek protection in the EU, there is need for an increase in legal avenues for migration

## The Irish Response

In response to the crisis, the Irish Government, in September 2015, agreed to establish the ‘Irish Refugee Protection Programme’ and made a commitment to accept 2,900 people under EU relocation and resettlement programmes.<sup>23</sup> This was in addition to a commitment made in July 2015 to accept 600 people as part of an EU relocation programme, as well as a promise to admit 520 people under an EU resettlement programme. In all, therefore, the Irish Government has made commitments to accept around 4,020 persons under the EU relocation and resettlement programmes and has stated that it expects these numbers to be augmented by family reunifications.<sup>24</sup>

The key ambitions of this nascent programme are: the creation of a network of Emergency Reception and Orientation Centres; assessments and decisions on refugee status to be made within weeks; special attention to be given to the plight of unaccompanied

children; the provision of additional budgetary resources; and the establishment of a cross-departmental taskforce to coordinate and implement the programme.

In a context where the focus is, understandably, on the crisis emanating from the arrival of large numbers of people into Europe, it is important that the needs of asylum seekers already in the application process in this country, especially those residing long-term in Direct Provision, are not forgotten. The number of new asylum applications in Ireland in 2015 was twice that in the previous year, having increased from 1,448 in 2014 to 3,276 in 2015.<sup>25</sup> Irish relocation and resettlement initiatives under EU programmes represent commitments which are additional to dealing with these applications.

Ensuring consistent, equal and fair determination processes and procedures which operate regardless of how protection applicants arrive in Ireland is critical.

While the proactive response indicated in the Irish Government’s statement in September 2015 was broadly welcomed, key questions remain, including:

**Scale of Response:** Can and should Ireland do more? A joint briefing paper, *Protection, Resettlement and Integration*, issued by a number of Irish NGOs, including JRS Ireland, contends that the country has the capacity to respond much more generously to the scale of human need presented by the arrival in Europe of hundreds of thousands of refugees and migrants. The paper advocates that the Government should: ‘Keep the number of relocated and resettled people under review with a view to increasing the number to approximately 0.5% of the population (22,000)’.<sup>26</sup>

**Accommodation:** How will the proposed Emergency Reception and Orientation Centres for the accommodation of those relocated or resettled under EU programmes differ from the existing Direct Provision centres? Will the opening of these centres lead to a two-tier accommodation system for people seeking protection in Ireland?

**Prioritisation:** Will applications for protection made under the European relocation scheme be given priority in the determination process? If so, what will be the impact on the length of time taken to process the claims of existing applicants, many

of whom have already spent years in the system? Is there a danger that there will emerge a two-tier case processing system for persons seeking protection in Ireland?

**Resources:** The Final Report of the Government-appointed Working Group on the Protection Process, issued in June 2015, identified the elimination of backlogs and the provision of additional resources for case processing as key requirements for the reform of the Irish protection system.<sup>27</sup> Will sufficient additional resources now be provided not only to implement the recommendations of the Working Group but to fulfil the new commitments arising out of the EU relocation and resettlement programmes being operated under the ‘Irish Refugee Protection Programme’?

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*Ireland could and should be doing more in response to the vast scale of human need arising from the current crisis.*

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**Integration Planning:** What steps will be taken to ensure that there are adequate resources to meet the education, English-language acquisition, welfare and employment needs of people granted protection status under EU programmes *and* of people given status under the existing protection application system, and thus exiting Direct Provision?

The key to Ireland responding appropriately and generously to the crisis is to have a fair and transparent asylum process that is operating efficiently and producing final determinations in a timely manner. The introduction of a ‘single procedure’ for determining protection applications, under the International Protection Act 2015, is a welcome first step.<sup>28</sup> However, its effectiveness in eliminating excessive delays in the asylum system will be undermined if the Government fails to fully implement the key recommendations of the Working Group on the Protection Process.

At the time of writing, it is unclear to what extent the EU–Turkey agreement will impact on the approach adopted by Ireland in response to the crisis. However, regardless of the potential ramifications of that deal and any operational difficulties that may exist, there is nothing to

prevent this country from significantly enhancing its own resettlement programme or unilaterally exploring and scaling up other safe and legal ways to facilitate greater access to protection in the State. Fundamentally, Ireland could and should be doing more in response to the vast scale of human need arising from the current crisis.

## Response by Individuals

In many EU Member States, including Ireland, there has been considerable public goodwill and support for refugees crossing the Mediterranean Sea into Europe, especially those fleeing Syria. Individuals and communities have pledged accommodation, time and skills to assist refugees being resettled or relocated. Following the call from Pope Francis for religious communities to play a role in responding to the refugee crisis, there has been dialogue among faith-based stakeholders and church groups as to how to welcome and assist refugees in a coordinated and effective way.

It remains the case, however, that due to the dynamic nature of the crisis, and its enormity and complexity, individuals may be unsure as to what are the most effective ways they can respond to the urgent humanitarian needs of refugees and migrants arriving in Europe. Concrete actions which individuals might take include:

- **Donate:** Support Jesuit Refugee Service International appeals (for example, its ‘Urgent Appeal for Syrians’ or ‘Give a Warm Welcome to Refugees in Europe’ or ‘Mercy in Motion’ appeals). These appeals are for funds to provide food, blankets, first aid, other basic necessities, and educational services for refugees.<sup>29</sup>
- **Volunteer:** Contact JRS Ireland, the Irish Red Cross or local parish and community groups to pledge services or time in order to welcome victims of forced displacement living in Ireland.
- **Advocate:** Urge politicians from across the political spectrum to not only work for improvements in the State’s protection process, including the Direct Provision system, but show support for Ireland making a greater contribution to the EU response to migrants and refugees arriving in Europe.

## Conclusion

The unprecedented scale of the refugee and migrant crisis casts a shadow over the European Union



that is unlikely to fade in the foreseeable future. Stark divisions among EU Member States, the *ad hoc* implementation of border control measures, and the inadequacy of policy responses adopted to date threaten the very foundations of the European project. But it must not be forgotten that failures in the response also threaten the lives of thousands of refugees and migrants.

Peter Sutherland, the UN Secretary-General's Special Representative for Migration and Development, has contended that the EU, with a population of just under 510 million people, should have been able to welcome the arrival of a million refugees 'had the political leadership of the member states wanted to do so and had the effort been properly organised'. Instead, he said, 'ruinously selfish behaviour by some members has brought the EU to its knees'.<sup>30</sup>

In the immediate future, the EU must find solutions which save lives by diverting people from perilous sea crossings and ensure a fair and equitable sharing across Member States of responsibility for receiving and processing applications for protection. In addition, it must contribute to efforts to address the root causes of the crisis.

Other fundamental questions arise:

- How will the arrival of large numbers of refugees and other migrants be managed to ensure the founding values of Europe are strengthened and not undermined?
- What steps must be taken to foster integration and avoid the marginalisation of refugee and migrant cohorts and the risk of radicalisation?
- How do we, as European citizens, embrace difference and welcome the stranger?

In conclusion, it is worth reflecting on the words of the President of the Conference of European Jesuit Provincials, John Dardis SJ:

*While asylum and migration are certainly complex issues, the simple fact is that, in the end, people are dying. At this defining moment, we can and we must reach out.*

*... There has been debate in recent years about the Christian roots of our continent. This is a time to show that this is not a debate only about language and terminology. Let us together try to help our*

*continent and our societies move forward, to show that we are Christian not just in name but in fact, to show our love 'not just in words but in deeds'.*<sup>31</sup>

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**David Moriarty is Policy and Advocacy Officer, Jesuit Refugee Service Ireland.**

# Our Common Humanity: Human Rights and Refugee Protection

Colin Harvey

## Contexts

The global refugee crisis is raising profound questions about the status and effectiveness of protection regimes at all levels. It should also prompt reflection on the present international order and why, despite the plea of ‘never again’, we still witness human rights violations on massive scales.

The world remains a structurally unequal place, where social injustice is rampant, and individuals and communities are routinely forced to flee their homes. However small it may now feel, the interdependent world we inhabit is not the welcoming place we might expect. Recognition of our common humanity increasingly runs parallel with exclusion, deterrence and deflection. For many, but not all, the world is a much more tightly regulated space, where states determine the contours of movement on a highly instrumental basis. The lives of individuals and communities become secondary to strategic games lacking in mercy and compassion. The plight of the forcibly displaced therefore presents a distinctive set of challenges: to deliver justice to the ‘stranger’ in need and to struggle for justice and peace in our world.

Pope Francis continues to place great emphasis on refugee protection, and his work has generated a renewed focus on the social doctrine of the Church. Through word and deed, he demonstrates an openness to the humanity of the refugee. This is reflective of a long-standing practical engagement within the Catholic tradition of respect for the human rights of the forcibly displaced, and an embrace of an inclusive concept of ‘refugee’.<sup>1</sup> Underpinning this perspective is a strong alignment with many pressing concerns of the modern human rights movement. At its heart is enduring respect for the dignity of the human person, and a conscious negation of all forms of domination and oppression that deny our inherent dignity. The demand is to experience the person first, as someone in need of our support and help.

Those who are forcibly displaced confront the theory and practice of human rights in direct ways. The fact of being coerced into flight combines with

the reality of seeking sanctuary in another state or, for those who are internally displaced, elsewhere within the state. Can the principles of human rights and refugee protection rise to the challenge of providing security in a harsh and often cruel world? What might be the way forward?

## Human Rights and Catholic Social Teaching

It is worth noting something about human rights and Catholic social teaching that can get lost in the public square.<sup>2</sup> Catholic social teaching clearly insists on the fundamental significance of human rights and human dignity.<sup>3</sup> This focus on respect for the human person has implications for those who are forced to rely only on their humanity.<sup>4</sup> There is a strong imperative for Catholics everywhere to be leading voices within human rights movements. It remains possible to miss the centrality of human rights to Catholic social teaching, and thus underestimate the potential impact.

The commitment to human rights and human dignity in the Church’s social teaching embraces civil, political, economic, social and cultural rights. This ‘Catholic perspective’ influenced the drafting of the Universal Declaration of Human Rights (1948), a document that stresses dignity, brings together the full range of rights, and recognises the centrality of community to the formation of the person. The *Compendium on the Social Doctrine of the Church* provides abundant evidence to support the role of human rights.<sup>5</sup> Pope Francis underlines how much the principle of the common good is based on respect for human rights.<sup>6</sup> The strength of the existing doctrinal resources can be neglected, and perhaps the time may be right to revisit their practical implications as part of any process of radical renewal. Does the Catholic Church consistently stand with the marginalised, excluded and those whose dignity is denied today?

## Law and Human Rights

Law increasingly dominates the discussion about human rights. Rights now take legal form at international, regional, national and sub-national levels; the debates which emerge are often over the meaning of specifically *legal* norms. The post-1945 rise of international standards and institutions

(itself shaped by constitutional developments) is also evident in the further advancement of constitutional rights. States such as Ireland and the UK have ratified a significant number of international instruments. For example, Ireland is a state party to the International Covenant on Civil and Political Rights (and to the Optional Protocols to the Covenant), to the International Covenant on Economic, Social and Cultural Rights, and to the UN Convention on the Rights of the Child (and to, for example, the Optional Protocol to the Convention on a communications procedure). Ireland submits periodic reports to international treaty-monitoring bodies, and is subject to the Universal Periodic Review process under the auspices of the UN Human Rights Council (of which it was a member from 2013 to 2015).

The effectiveness of international human rights law is an open question, but its existence holds out the idea (and the possibility) that legal norms can be generated and accepted that universally acknowledge the rights of the human person.

These international mechanisms have their *regional* equivalents, with the European Convention on Human Rights system (established by the Council of Europe) being the best known in Ireland. The EU too has its own ‘human rights agenda’ – obvious, for example, in the Charter of Fundamental Rights of the European Union (including, under Articles 18 and 19, a right to asylum and protection against removal, expulsion or extradition).

These are standards that primarily embrace ‘everyone’, and although in practice they often depend on national realisation, the ambition is plain. The simple and powerful idea is that citizenship, or any other form of membership, should *not* be the key to unlocking these legal guarantees. ‘Asylum seeker’, ‘migrant’, ‘prisoner’: these are all forms of categorisation that should not stand in the way of entitlement to human rights. There may also be individuals who require special guarantees, and additional measures to ensure that their rights are affirmatively respected. This too is acknowledged.

On some occasions, human rights will place a normative question mark over individual and collective action, including work that is undertaken in the name of the common good. This does not necessarily mean that an absolutist view of atomised rights will prevail. For example, it may be possible to justify lawful and proportionate

interference with certain legal rights – an idea that is well accepted in human rights law. The law may also insist that certain things are never permissible and can never be justified: torture is often given as an example.

The domestic impact of international standards depends on many things, including whether the obligations have direct effect or whether they require transposition into the national legal system. ‘Dualist’ states, such as Ireland and the UK, must take an additional step before these standards become legally effective. However, the absence of that additional step does not mean that the international measures have no impact. They can still be used in advocacy and argument, and it can still be quite legitimately said that a state is in breach of its international legal obligations. There is scope for more work to be undertaken to ensure that these international guarantees are incorporated into domestic law. State-based responses must therefore be viewed as part of an internationalised conversation about human rights and their practical realisation.

## Human Rights and Human Displacement

The suggestion here is that it is essential to locate discussions about international protection measures within a broader human rights framework. This is precisely because Catholic social teaching and the global human rights movement are in a similar space when the cry is ‘to experience the human person first’. It is not difficult to understand why this is vital to consideration of refugee protection.

The scale of the global crisis of forced displacement is well documented. The levels have returned to ‘world war’ proportions, and the causes are becoming ever more diverse (for example, climate change). The current international legal regime grew out of the post-1945 period, and emerged during the first phase of human rights institution-building and standard-setting. The Universal Declaration of Human Rights places dignity and rights at the core of its understanding of ‘freedom, justice and peace in the world’.<sup>7</sup> It contains a human right ‘to seek and to enjoy in other countries asylum from persecution’.<sup>8</sup> The right to ‘seek’ as well as the right to ‘enjoy’ asylum must be continually emphasised today.

The cornerstones of international refugee law remain the 1951 Convention relating to the Status of Refugees and the 1967 Protocol (Ireland is a state party to both). The Office of the United

Nations High Commissioner for Refugees (UNHCR) provides ongoing support for this international legal mechanism, and is the lead organisation in supervising the application of these instruments.

The legal regime established a concept of the refugee that has endured, even though there have been key advances and significant developments in regional contexts. The ‘status-creating’ nature of international refugee law means that those who are ‘refugees’ for these legal purposes (recognition by states is declaratory and not constitutive) possess international legal guarantees.<sup>9</sup> The ‘well-founded fear of being persecuted’ test has not remained static, and perhaps one of the more notable trends in refugee law is how the ‘definition’ is consistently informed by progressive developments in human rights. This has allowed the concept of refugee to remain surprisingly relevant, and the scope for further interpretative innovation is there. The protections which the concept unlocks for those seeking asylum are of fundamental value, and give recognition to civil, political, economic, social and cultural rights and needs.



Refugee camp, Kurdistan, Iraq, 2014

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Although it is still significant, the relevance of the concept of refugee is consistently questioned.<sup>10</sup> The definition, however expansively interpreted, can seem unduly narrow. International refugee law effectively delegates to states the procedural dimensions of implementation. UNHCR, of course, plays a vital role too, but there is no equivalent of the treaty-monitoring bodies of international human rights law. Even the guarantees that are there are often hedged around with limitations.

It is possible to acknowledge these weaknesses and, for principled and pragmatic reasons, defend the existing system. Its survival remains an achievement, and it has assisted in ensuring

protection when needed. As tempting as it may be to commence another reform initiative, it is perhaps not the best time, and there is ongoing work to be done to maximise the effectiveness of what is there now. If good use is made of international human rights standards (in advancing refugee protection) it may be sensible to accept the limitations of refugee law – and the exclusionary debates that swirl around the notion of the ‘genuine refugee’ – while also paying much more attention to the complexities that shape human displacement and human migration. Human rights discourse has much to contribute to this task. There is growing recognition, for example, of the human rights of those who may be in need of international protection but who may not be ‘Convention refugees’.

For states such as Ireland this picture is supplemented by regional and supranational contexts. The Council of Europe continues to promote human rights throughout Europe and, when given the opportunity, the European Court of Human Rights rightly reminds states what the human rights of ‘everyone’ mean in practical terms. It is a court that is often under considerable pressure and strain and, although not without flaws, it must be defended and strongly encouraged to hold to its rights-reinforcing jurisprudence. In the time ahead, its role may become of heightened value, but only if it is willing to apply its own jurisprudence on Convention rights in a robust, consistent and principled way.

The EU presents its own distinctive questions. Its emergence as a more ‘constitutionalised’ entity means that it has embraced human rights further. At the same time, however, it is creating a Common European Asylum System that can look and feel very much like the caricature of ‘Fortress Europe’. The utter failures of that system became all too evident in 2015, as the notion of solidarity effectively collapsed into inter-state contestation. What cannot be neglected in this is the emerging role of the Court of Justice of the EU, and the impact its work is having on European and global discussions of refugee protection. If this European project continues to advance, then the struggle will be to ensure that it is radically reformed to reflect a rights-based approach guided by best practice on international protection. Human rights discourse can play a valuable role in these conversations by reminding states of the human person at the centre of whatever ingenious mechanisms they devise for managing the forcibly displaced.



## Ways Forward?

In order to promote further discussion it may be helpful to note elements that should be present in any humane approach. It is not the intention here to give an exhaustive list, but simply to provide some general reflections on what we might strive for.

First, there is a need to play a full and active part in strengthening the existing tools of international human rights and refugee law. At a minimum, this includes ratification of relevant instruments and encouraging other states to do so. Without seeking to overstate the role of international law, there is an urgent need to bolster the international machinery. This should combine with all relevant international and regional efforts to advance peace, justice and solidarity. Global problems of this scale must be tackled and solved collectively as part of a multi-stranded approach.

Second, no state should make matters worse – the notion of ‘do no harm’. This includes the myriad ways that states (and others, including multinational corporations) find to nurture conflict and inequality. Those that engage in persistent ‘refugee-generating’ and/or ‘inequality perpetuating’ behaviour should not be surprised when forced displacement is the result.

Third, it must be clear in national (and in supranational) law, policy and practice that existing international guarantees will be respected, upheld and implemented. There is little point in attempting to be a global ambassador for human rights if domestic practice is appalling. This might be a simple plea to ‘practise locally what you preach globally’.

Fourth, put in place an accessible, sustainable, humane and effective system of international protection at the national level. This includes treating people with dignity and respect throughout any determination process and afterwards. Too many states try to send a message to the world through their asylum systems; it often reads: ‘Do not come here’. It is a stark example of the instrumental use of human beings. Procedures must be fair and accessible, as well as efficient and effective. There is much guidance available on what a good system might look like. This embraces too the subtle (and not so subtle) attempts to undermine the human right to seek asylum. Do not make it impossible for someone to seek asylum in the first place.

Finally, in all the systems for dealing with people who are forcibly displaced, it is imperative that states, individuals and communities try to ensure that those seeking protection do not encounter only labels and categories. We must find ways to experience the human person first (in all her or his complexity, strength and fragility). This means deploying available tools to ensure policies and practices are anchored in human rights, as well as thinking about the language that is used to talk about international protection. A human rights framework might assist, and Catholic social teaching and the global human rights movement are more aligned here than is often acknowledged.

## Notes

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**Colin Harvey teaches human rights law (and related subjects) in the School of Law, Queen’s University Belfast.**

# Climate Change and Population Displacement

Catherine Devitt

## Introduction

The September 2015 issue of *Working Notes* had as its main theme, ‘Caring for our Common Home’,<sup>1</sup> exploring aspects of our relationship with the natural environment, while providing a strong moral argument for taking urgent action in response to threats to our environment, including those arising from climate change.

Simply put, climate change is the altering of the Earth’s climate due to human-induced atmospheric and terrestrial changes, with significant implications for weather patterns, biodiversity, agriculture, and economic and social systems in general.

This article opens with an outline of the main ramifications of climate change, followed by a focus on the relationship between climate change and population displacement. The status under international law of people displaced by climate change is considered next, and the article concludes by indicating some of the key issues involved in preventing and responding to climate-related displacement.

## Impact of Climate Change

The Fifth Assessment of the Intergovernmental Panel on Climate Change (IPCC), published in 2013, concluded that climate change will likely result in changes to regional climate patterns, and increases in the frequency and severity of extreme weather events, the most threatening of which will include hurricanes, flash floods, heat waves, extreme cold spells, and drought.<sup>2</sup>

The implications of these extreme weather events, and of climate change generally, are multiple and far-reaching.<sup>2,3</sup> For example, the expected disappearance of some of the world’s most important glaciers as a result of increased temperatures in regions such as the Himalaya-Hindu Kush mountain ranges will impact directly on the 2.2 billion people living in these regions who depend on seasonal glacier melt for their water supply.

Low-lying coastal regions, island nations and semi-arid regions are particularly vulnerable to

the adverse effects of climate change. For low-lying coastal regions, climate change will likely result in an increased occurrence of storm and cyclone activity, flooding, rising sea levels and salinity intrusion.<sup>4</sup> Many of these regions are densely populated: indeed, fourteen of the world’s seventeen largest cities are located in such areas, placing over 50 per cent of the global population at risk of coastal flooding and erosion.<sup>5</sup>

In the case of Bangladesh, for example, about half of its 150 million population lives in areas which are less than five metres above sea level. The consequent vulnerability to the effects of climate change has significant implications for food security across the region<sup>6</sup> and there are predictions that between 3 and 10 million people will be internally displaced in Bangladesh over the next 40 years,<sup>7</sup> swelling already strained urban centres, such as Dhaka.

Island nations susceptible to the effects of climate change face not only the danger of homes and other buildings being flooded, but the threat of livelihoods being destroyed as a result of the contamination of agricultural resources by saltwater intrusion. Nations such as the Republic of Maldives will become uninhabitable if sea levels rise by one metre, and many low-lying island regions will gradually disappear if sea levels continue to rise.

The impact of climate change is acutely evident in the case of Kiribati – a Pacific island nation, consisting of thirty-three atolls and reef islands, with a population of just over 100,000 people. The highest point in Kiribati is only two metres above the sea level. It has been predicted that, by the middle of this century, Kiribati will become the first nation in the world to be completely eradicated as a consequence of rising sea levels. Already, rising sea levels have claimed land on which houses were previously located, led to freshwater wells being filled with salt water, and forced people to migrate to other parts of the country. Many of the Kiribati communities rely on marine resources and the wider natural environment for their livelihoods, but saltwater intrusion has started to contaminate these resources.<sup>8</sup> In 2014, in response to the looming

crisis, the President of Kiribati purchased 20 sq km of land on Vanua Levu, one of the Fiji islands, about 2,000km away.<sup>9</sup>

In the words of Linda Uan, an inhabitant of Kiribati:

*The majority of I-Kiribati have no wish to live in another country, but mounting evidence suggests that we may soon have little choice. Therefore migration may become the key part of the way we are forced to 'adapt' ... But, there's a problem. Unlike our neighbours in Tuvalu (with a population of about 10,000) we have no significant or sympathetic migration relationship or policy with any country.*<sup>10</sup>

Even in Ireland, significant and widespread flooding in December 2015 led to discussion of the need to consider population relocation as a way of adapting to increased risk of flooding.



Devastation after cyclone

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## Climate Change and Population Displacement

Migration as a result of environmental change is not a new phenomenon. However, the escalation of human-induced climate change and the associated consequences for human populations will likely contribute, directly and indirectly, to an increase in the volume of internal and cross-border movement occurring globally and to significant changes in patterns of migration around the world. Migration may therefore be seen as a form of adaptation to changing climate conditions and extreme weather events.

It has been estimated that, in the seven years up to and including 2014, on average 22.5 million people were displaced annually as a result of climate change or weather-related disasters.<sup>11</sup> In 2014, floods and storms accounted for 92 per cent

of the estimated global total of people displaced by disasters – the largest three displacements were the result of floods and typhoons in India and the Philippines.<sup>12</sup>

Climate change and associated increases in migration are likely to worsen prevailing resource scarcities, most especially in developing countries. António Guterres, United Nations High Commissioner for Refugees from 2005 to 2015, noted:

*What we are now seeing are more and more people that are forced to flee because of lack of water, because of lack of food, because of extreme poverty and many of these situations are enhanced by climate change.*<sup>13</sup>

Such increased pressures on essential resources arising at least in part from climate change may in turn have implications for regional and international peace and security – a point highlighted by the IPCC<sup>14</sup> and UNHCR.<sup>15</sup>

For instance, increased competition for resources made scarce by climate change may lead to an initial displacement of population which, in turn, may contribute to tensions and conflicts – and these in turn may lead to further and even greater displacement, both internally and across borders.

A number of reports and accounts have made associations between conflicts in Iraq and Syria and climate-related issues, particularly water scarcity.<sup>16</sup> Kelley *et al*, for example, point out that before the Syrian uprising in 2011, the Middle East's 'greater Fertile Crescent', including Syria, experienced a three-year drought – the worst recorded under established instruments of measurement.<sup>17</sup> The authors argue that the extreme nature of this drought, exacerbated by unsustainable water management and agricultural practices, resulted in the internal displacement of an estimated 1.5 million people in Syria, with most migrating to the peripheries of the country's urban centres.<sup>18</sup> Resulting demographic change and inequalities may have propelled civil unrest. In effect, although climate change did not directly precipitate the conflict, it did exacerbate existing vulnerabilities.<sup>19</sup>

## Protection under International Law

Existing international refugee and migration law does not specifically take account of populations forced to migrate because of climate-induced environmental change.<sup>20</sup> In other words, there exist



no distinct frameworks, structures or guidelines to provide for people displaced for this reason. The term ‘climate refugee’ therefore remains the subject of debate and, for now, can be said to be a quasi-definitional description, with no basis for legal enforcement. An absence of definition under international law means that people compelled to move because of climate change remain ‘almost invisible in the international system ... unable to prove political persecution in their country of origin, they fall through the cracks of asylum law’.<sup>21</sup>

This absence is related to the historical development of international frameworks for protection: the official definition of refugee status was agreed at a time when the threat of climate change was generally unknown. According to the 1951 United Nations Convention relating to the Status of Refugees, a ‘refugee’ is legally defined as an individual who is unable to return to his or her country because of a well-founded fear of persecution. This definition leaves little scope for the protection of the rights of persons fleeing their home country because of the direct or indirect effects of climate change.

There is, therefore, an increasing onus on the international community to acknowledge, define and respond to climate-related population displacement and specifically to consider if and how international legal frameworks should accommodate cross-border displacement associated with climate change:

*There are well-founded fears that the number of people fleeing untenable environmental conditions may grow exponentially as the world experiences the effects of climate change and other phenomena ... This new category of ‘refugee’ needs to find a place in international agreements. We need to better anticipate support requirements, similar to those of people fleeing other unviable situations.*<sup>22</sup>

Some commentators suggest that the appropriate approach could involve the expansion of the 1951 Refugee Convention, and its 1967 Protocol, so as to include a legal definition for climate refugees. Others, such as the Norwegian Refugee Council, argue that a more effective approach could be the development of a separate international convention for climate refugees, as the prevailing framework for protection may prove unsuitable for the dynamics of climate change and related displacement.<sup>23</sup>

A further issue in regard to the protection of people displaced by climate change is that often those affected do not, in fact, migrate to another country but instead move to another part of their own state. This is because the effects of climate change tend to be regional in nature, thus impacting on specific areas rather than on a country as a whole. Those forced to move therefore become ‘internally displaced persons’, which means that the primary responsibility for responding to their situation rests with their own state.<sup>24</sup> In reality, of course, the capacity of states experiencing the impact of climate change to meet the economic and social needs arising from significant internal movements of population may be limited.

In any case, it is clear that significant challenges lie ahead in determining the specific linkages between climate change and population displacement, and for this reason there is considerable scope for cross-disciplinary collaboration between climate scientists and policy makers. As already noted, climate change may not necessarily be the key push factor in the emergence of displacement, which instead may be a response to a host of variables, some of which are exacerbated by climate effects.

Regardless of the challenges involved, debate about the definition and status of climate ‘refugees’ in international law will undoubtedly continue. However, it is important to note the resistance that exists in the international community to the idea of expanding the definition of ‘refugee’ under international law to include those displaced by climate events.<sup>25</sup> It is equally important to note that, even in the absence of such resistance, efforts to define and recognise the concept of ‘climate refugee’ will come up against the reality that there is a lack of consistent approaches to refugee protection across the globe, including the fact that there are some states which do not have refugee laws or which have not ratified international instruments on protection.<sup>26</sup>

## A Way Forward

In his encyclical letter, *Laudato si’: On Care for Our Common Home*, Pope Francis refers to the ‘tragic rise in the number of migrants seeking to flee from the growing poverty caused by environmental degradation’.<sup>27</sup> He goes on to say:

*... they are not recognized by international conventions as refugees; they bear the loss of the lives they have left behind, without enjoying any legal protection whatsoever. Sadly, there is*



*widespread indifference to such suffering, which is even now taking place throughout our world. Our lack of response to these tragedies involving our brothers and sisters points to the loss of that sense of responsibility for our fellow men and women upon which all civil society is founded.*<sup>28</sup>

A key feature of *Laudato si'* is the concept of 'integral ecology' – the recognition of the connection between the existential economic, social and environmental crises confronting humanity. Pope Francis proposes integral ecology as an appropriate lens through which to understand and respond to the environmental and related human crises facing the world. He says:

*... everything is closely interrelated, and today's problems call for a vision capable of taking into account every aspect of the global crisis.*<sup>29</sup>

By adopting an integral ecology perspective, we can acknowledge that the environmental issues confronting the world are, in fact, symptoms of deeply ingrained injustices. Unless these root causes are addressed, social and environmental crises will continue to unfold.

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*... the environmental issues confronting the world are, in fact, symptoms of deeply ingrained injustices*

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This understanding is clearly of relevance to how we tackle climate change and its adverse effects, including population displacement. Climate change impacts will vary considerably, depending on existing vulnerabilities and capacities at individual, community and national levels. The potential for climate change to instigate population displacement will likewise vary, depending on such factors. For this reason, identifying the association between vulnerabilities to climate change and the political, economic and social forces that shape them is necessary for a more effective response to climate-related migration.

### **Global Policy Context**

A comprehensive approach, involving both development policy and international humanitarian responses to displacement, underpinned by consistent monitoring and data collection, is clearly

needed. A number of opportunities within the post-2015 global policy agenda provide scope for climate-related displacement to be better addressed.

The most important area of action relates to measures at national and international level to implement the Agreement reached at the UN Framework Convention on Climate Change Conference, held in Paris in late 2015 (COP21). The overarching commitments under the 'Paris Agreement' – to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and a commitment to 'pursue efforts' to limit increases to 1.5°C – are, of course, critical to lessening the threat of climate-induced displacement. Likewise, commitments in the Agreement in relation to the reduction of greenhouse gas emissions and the removal, by use of 'sinks', of the effects of such emissions; the recognition of the particular situation of developing countries and commitments in terms of support for adaptation and mitigation measures, are all highly relevant to the question of lessening vulnerability to climate-induced displacement.<sup>30</sup>

The Paris Agreement itself did not, however, specifically refer to displacement, but in its document, 'Adoption of the Paris Agreement', the Conference of the Parties called for the establishment of a task force to 'develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change'.<sup>31</sup> However, notably absent was any reference to examination of the question of extending the definition of 'refugee' under international law so as to include climate-induced displacement.

A second area of action relates to the realisation of the United Nations Sustainable Development Goals, agreed in September 2015, under the title, 'Transforming our World: the 2030 Agenda for Sustainable Development'.

With that agreement, the United Nations, for the first time, adopted an agenda for development which applies to all UN member states, regardless of their stage of development. Crucially, this agenda, described as 'a plan of action for people, planet and prosperity', integrates economic, social and environmental sustainability.<sup>32</sup>

While waiting for a strengthened international policy context, there remains an obvious responsibility on individuals to reduce the carbon

emissions related to their own consumption choices and ways of living and to seek to influence political leaders in regard to action on climate change. Of concern at the political level is not only the development and implementation of stronger policies to reduce national greenhouse gas emissions but the question of making a meaningful contribution to mitigation and adaptation efforts in more vulnerable, at-risk, countries.

Mechanisms such as the Green Climate Fund<sup>33</sup> could offer one line of approach: by providing assistance in relation to climate change mitigation and adaptation, the potential for displacement can be reduced. A suggestion has also been made for the development of a distinct fund to tackle climate-related displacement which could be underpinned by the 'polluter pays principle', implying that it would be financed predominantly by developed nations.

As Europe can anticipate increased migratory pressures over coming decades, there is potential for Ireland to display leadership in the way it responds. According to one climate vulnerability index, Ireland is among the countries least at risk of experiencing the adverse effects of climate change and so it has the potential to become a place of refuge for those displaced by the ramifications of such change.

Above all, there is a moral imperative for Ireland to take responsibility for its contribution to global greenhouse gas emissions, especially as Ireland's per capita emissions profile is one of the highest among developed countries.<sup>34</sup> Furthermore, considerable scope remains for Ireland to increase its contributions to financial support mechanisms such as the Green Climate Fund.<sup>35</sup>

## Conclusion

This article has attempted to outline the complex relationship between climate change and population displacement. It is clear that if there is to be an effective response to the growing phenomenon of forced migration related to climate change, a radical reduction in carbon emissions must be prioritised and sufficient effort and resources devoted to climate change mitigation and adaptation. Furthermore, the question of the recognition of climate-related population displacement in international law on protection must be addressed. The concept of integral ecology, outlined in the

Pope Francis' encyclical, *Laudato si'*, presents a perspective which can help in developing greater understanding of the relationship between climate change and social injustices and in fostering increased commitment to addressing the root causes of these injustices.

## Notes

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**Catherine Devitt is Environmental Justice Officer with the Jesuit Centre for Faith and Justice.**