

Non-nationals displaced in South Africa

Jean-Pierre Misago and Tamlyn Monson

The internal displacement of non-nationals in South Africa raises some questions about the ability of international law to protect this particularly vulnerable group.

In the space of a few weeks in 2008, a vast number of primarily African non-nationals were violently displaced from their communities of 'urban integration' in South African townships. Large numbers of asylum seekers and refugees became IDPs – an anomaly in terms of the international frameworks on displacement and refuge. Their plight reflected a number of misconceptions about the impact of international migration on poor urban communities and the security risks these misconceptions represent in areas of weak state penetration, plus an important possible blind spot in current debates on internal displacement.

Xenophobic violence is not new to post-apartheid South Africa. However, the violent attacks against foreign nationals that shocked the country in May and June 2008 were unprecedented in

their ferocity, intensity and rapid geographic spread. In less than a month, there were 135 separate violent incidents that left 62 people dead, at least 670 wounded, dozens raped, more than 100,000 displaced and millions of rands worth of property looted or destroyed.

In the wake of the attacks – which subsided only after the South African army intervened – those foreign nationals who were not 'voluntarily' repatriated or deported (many of them asylum seekers or refugees) were sheltered in makeshift camps outside police stations until temporary displacement camps were set up to accommodate approximately 20,000 displaced persons in the Gauteng and Western Cape provinces. It appears that most of the displaced chose to resettle in alternative urban neighbourhoods or to return to the communities that mobilised

against them but there has been very little action taken to mitigate the possibility of a repeat of the attacks, and no visible government tracking or profiling of these IDPs.

Triggers of violence

Between August and November 2008, the Forced Migration Studies Programme (FMSP) conducted research to ascertain the causes of the displacement and to understand why, despite high levels of anti-foreigner sentiment throughout South Africa, xenophobic attitudes sparked violent displacement in only a limited number of areas. Researchers visited nine sites where xenophobic violence occurred between January 2007 and June 2008, and two sites where there had been no significant violence despite the presence of non-nationals. In each site, the team interviewed South African residents, non-nationals, government officials, community leaders and representatives of civil society organisations. Over 400 people (including youth, women and the elderly) participated in the study.

Popular explanations of the causes for the attacks on non-nationals blamed the negative impact of the urban integration of refugees, asylum seekers and other categories of African cross-border migrants in poor urban communities. The 'problem' of non-nationals was seen as one of urban poverty, crime and unemployment; and the competition of non-nationals for resources, jobs and opportunities in deprived and under-serviced areas. Rural to urban displacement occurs in the same context but the perception that these migrants were outsiders to both the nation and the state functioned as a convenient rationale for their victimisation.

The research found that although these perceptions of the impacts of international migration on poor urban areas did indeed form part of the climate for the attacks, the direct trigger was not the real or perceived



Zimbabwean refugees queue early in the morning outside the Musina Refugee Reception Centre, South Africa.

impacts of urban integration but the nature of authority structures in affected areas. The same tensions surrounding crime and competition existed where displacement did not take place, suggesting that negative perceptions are a necessary but not sufficient condition for the violent displacement of non-nationals. The research found no evidence to support popular perceptions that the displacements were caused by:

- a mass influx of foreigners due to a breakdown in border control: where the non-national population had significantly increased, it was due to continuous settlement rather than a sudden in-flow. In addition, newcomers were not the only targets for violence: most of the displaced had lived in their communities for years.
- rising food and commodity prices and the resultant economic hardship: most respondents understood that the economic challenges were a result of a global economic crisis rather than the presence of non-nationals.
- poor service delivery: service delivery problems are common across impoverished areas in South Africa. Also, the study showed that service delivery was sometimes worse in areas where violence did not break out.

The research established that violence broke out in areas of weak state presence and of unofficial, non-state or partially privatised authority structures. Thus, the nature of authority appeared to be the factor that allowed negative perceptions to transform into violent displacement. Authority structures had the following characteristics in areas where violent displacement took place:

- institutionalised xenophobia in police and other government structures: this is often based on limited knowledge of and respect for the country's legal and policy framework regarding non-nationals.
- inadequate or inappropriate conflict resolution mechanisms: the failure of existing government and civil society structures to address

residents' concerns (however ill-founded) about non-nationals led to disillusionment with official structures, encouraging vigilantism and mob 'justice'.

- political vacuums or competition in community leadership: this encouraged the emergence of unofficial, illegitimate and often violent forms of local leadership which – in order to enhance their authority and power – fostered and exploited communities' unresolved resentment toward outsiders.
- a culture of impunity: this eliminated an important disincentive to the victimisation of non-nationals and other outsiders for personal and/or political gain.

Recommendations for South Africa

Non-nationals displaced by the 2008 attacks have been problematically 'reintegrated' into the communities that displaced them, or into other poor urban communities where non-nationals are also stigmatised and excluded, and where local government structures are equally fragile or vulnerable to co-optation by private interest groups. Yet the government has not developed any means of tracking or profiling non-national IDPs in order to monitor their whereabouts and conditions, meaning that their impact on areas of resettlement or 'reintegration' remains hidden, impeding risk management around the possibility of further displacement. In this context, the security concerns around resettlement of internally displaced non-nationals remain grave.

It may not be possible to eliminate social tensions such as those between locals and 'outsiders' in poor urban South Africa. However, their manifestation as violent displacement can be discouraged by trusted, accountable and competent leadership structures committed to universal justice and the rule of law. Three important steps in promoting this kind of authority are:

- promoting universal access to the justice system and local governance structures such as community committees and policing forums
- enhancing community-based conflict resolution mechanisms that

respect the constitutional principles of universal rights and due process

- countering existing cultures of impunity with regard to public and/or xenophobic violence.

This suggests that to mitigate the impact of internal displacement, promoting respect for the law is more important than further developing law and policy. This applies not only to international instruments but to the letter of state law in general, since the non-state actors that achieve power in areas of weak state presence are not usually amenable to human or constitutional rights arguments.¹ In many countries, there are significant gaps between policies and practice with regard to IDPs.² The role of non-state authorities and the partial privatisation of local government functions through networks that subvert the intentions of national and provincial policy may play a role in creating these gaps.

In South Africa, being a foreigner compounds the vulnerabilities generally associated with internal displacement in a number of ways. Poor non-nationals in South Africa – including refugees and asylum seekers – are far less likely than citizens to satisfy the documentation requirements necessary (officially or unofficially) for accessing employment, housing or services. Many have limited, if any, recourse to police in the event of a crime, due to fear of deportation or institutional xenophobia. Due to stigmatisation, non-nationals are more likely to be excluded from the mechanisms of popular justice in place in areas of shallow or compromised government penetration. Thus, non-nationals are relatively invisible to the state – a fact that links them to the problem of untraceable crimes in the public imagination. On the other hand, due to language, dress and cultural practices, non-national IDPs are very visible to and easily targeted by South African residents of the communities in which they live. This adds up to a protection risk that is difficult to manage.

Gaps in the Guiding Principles?

Displaced non-nationals in South Africa were generally not referred to as IDPs, and the UN Guiding Principles on Internal Displacement

were clearly not applied.³ This in itself poses the question of whether non-nationals can be considered IDPs under international law. The experience also poses some other questions to the Principles.

The Principles aim to free IDPs from discrimination and make them equal before the law. How do we protect those whose immigration status creates prejudice against them?

How do we realise Principles 5 and 6 (which emphasise authorities' legal obligations to protect against arbitrary displacement) and Principle 29 (protecting the right to full and equal service access and participation in public affairs) when displacement tends to occur in areas of limited state penetration? To what extent is protection hampered by the assumption that states and international actors are the primary actors in preventing and addressing displacement?

Principle 9 obliges states to protect groups with a "special dependency ... on their lands". What of refugees, who have a special dependency on the country of refuge? Their vulnerability is all the greater because they live at the pleasure of a nation state whose territory is not theirs.

What are the limitations of a focus on IDP vulnerabilities in contexts in which non-IDPs are also highly vulnerable? IDPs often compete among the urban non-IDP poor and, for non-national IDPs in South Africa, their position of receiving – as it is perceived – preferential treatment in impoverished, underserved and overburdened areas has become a crucial security risk in the past.

Jean-Pierre Misago (jpmisago@gmail.com) and Tamlyn Monson (tamlynmonson@gmail.com) are researchers for the Migration Policy and Practice Initiative within the Forced Migration Studies Programme (<http://www.migration.org.za>) at the University of the Witwatersrand, Johannesburg.

The full report of the findings with additional recommendations is online at <http://tinyurl.com/IOMza09>

1. <http://www.fmreview.org/FMRpdfs/GP10/8-9.pdf>

2. <http://www.fmreview.org/FMRpdfs/GP10/15-16.pdf>

3. http://www.brookings.edu/projects/idp/gp_page.aspx