

# Non-citizens caught up in situations of conflict, violence and disaster

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**When non-citizens are caught up in humanitarian crises, they can be as vulnerable to displacement, and suffer its consequences as acutely, as citizens. Yet frameworks and capacities for assisting and protecting them are lacking.**

In recent years, millions of non-citizens have been displaced in countries where they reside and work. Examples include those affected by invasion in Lebanon in 2006, xenophobic violence in South Africa in 2008, revolution in Libya in 2011, civil war in Côte d'Ivoire in 2010-11, flooding in Thailand in 2011, and the current conflict in Syria.

They have been affected as bystanders or deliberately targeted. Non-citizens may not speak the local language or understand the culture, they may lack job security and they may have no local social safety net. Equally,

it may be harder for displaced non-citizens to resolve their displacement, especially if they are unable or unwilling to return to their country of origin, and if they face specific challenges in regaining property, identification documents and employment in the countries from which they have now been displaced.

The displacement of non-citizens is likely to become more common in the future. For example, the expansion of Chinese interests in sub-Saharan Africa is already resulting in large numbers of migrants working in unstable states. Climate change may make

many of the developing states where more migrants are moving for work susceptible to an increasing frequency of natural disasters. This combines with targeted violence against immigrants as a result of rising xenophobia in many countries around the world at the moment. As poor and developing countries continue to export migrant workers, the burden of providing assistance and protection during times of crisis is likely to continue to fall significantly on the international community, as such sending countries may lack the capacity to protect their own citizens overseas effectively.

Yet as in other examples of crisis migration, in many cases non-citizens who become displaced fall into protection gaps, and as a result responses have been ad hoc and incomplete. As the likelihood for migrants to be caught up in crises increases, a more comprehensive and predictable response is required.

#### Lessons and recommendations

More research, including better data collection, is required to establish the extent to which non-citizens face particular vulnerabilities at all stages of displacement and evaluations are needed of the humanitarian response to the displacement of non-citizens.

#### The rights of non-citizens during displacement are not explicitly enumerated:

The rights of non-citizens affected and displaced by crises are implicit in human rights law and international humanitarian law but nowhere are they explicitly stated. Instruments that cover displacement do not deal with non-citizens, while those that cover non-citizens do not deal with displacement. It may be argued that the Guiding Principles on Internal Displacement apply to non-citizens leaving homes or places of habitual residence but this probably does not include short-term or temporary migrant workers, and neither is it clear whether the Guiding Principles apply to irregular migrants. Equally, neither of the two International Labour Organization instruments relating to migrant workers nor the UN International

Convention on the Protection of the Rights of All Migrant Workers and their Families mention migrants in crisis and they do not contain provisions for their displacement.

The rights of non-citizens during displacement are nowhere enumerated, and neither are responsibilities for protecting their rights. One implication is that, on the whole, international organisations have assisted non-citizens alongside other displaced persons without discerning where non-citizens may have particular needs.

Where standards on displacement are being developed or updated they should make explicit reference to the rights of displaced non-citizens and responsible parties. The Nansen Principles are a case in point, as is the current work of the International Law Commission (2012) on standards on the 'expulsion of aliens' and the 'protection of persons in the event of disasters'.

#### Responsibilities for protecting and assisting non-citizens during crisis are not clearly ascribed:

It is not clear from existing provisions who is responsible for protecting and assisting non-citizens during crises. Reflecting human rights law and international humanitarian law, the Guiding Principles clearly assign primary responsibility to the state where the displacement takes place. Yet governments of the country of origin also have a legal, as well as civil and moral, responsibility to protect their own citizens, as stipulated in the Vienna Convention on Consular Relations. No UN agency has a mandate to protect or assist IDPs, whether or not they are citizens of the country where they are displaced. The International Organization for Migration (IOM) is the world's leading migration agency but it does not have a protection mandate, although it has recently developed a Migration Crisis Operational Framework intended to provide a migration lens on crises and which should provide a platform for greater international cooperation.<sup>1</sup>

There may be a case to refer the issue of displaced non-citizens to the UN Special

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Rapporteur on the human rights of migrants and the UN Special Rapporteur on the human rights of internally displaced persons.

### Asylum seekers and refugees require special attention:

The vulnerabilities of displaced non-citizens are heightened for asylum seekers, refugees and stateless persons, whose rights as enshrined under international law may be

hard to guarantee during crises. In the case of Lebanon, invasion affected an existing refugee population of some 400,000 Palestine refugees, who were already particularly vulnerable. In South Africa non-citizens were displaced specifically because they were targeted on the basis of their nationality, leading to asylum claims. In Libya there were 3,500 asylum seekers and 8,000 refugees registered by UNHCR before the uprising. UNHCR has reported that 360,000 Palestinians as well as 94,000 Iraqi and other refugees need immediate humanitarian support in Syria.

### Countries of origin have varying capabilities to assist in times of crisis:

Not all countries have the capability to assist their citizens when they are affected by humanitarian crises while abroad. In the cases of Myanmar and Zimbabwe, the political will to assist citizens displaced in Thailand and South Africa respectively was largely absent; indeed, some Zimbabwean migrant workers applied for asylum upon being displaced. In other cases poorer countries have simply lacked the capacity to assist; an international emergency fund should be considered, for access by countries of origin to fund the evacuation of their citizens during crises.

### Coordination among international agencies is unpredictable:

A coordinating mechanism



Tunisian border officials hold back the crowd at the Tunisia-Libya border in March 2011, where thousands of people anxious to leave Libya – principally migrant workers from Tunisia and Egypt – gathered in no-man's land.

should be established to ensure effective cooperation between relevant international agencies to assist and protect non-citizens displaced internally and across borders during crisis situations. Coordination between IOM and UNHCR during the Libyan crisis was a particular success but such coordination has certainly not been systematic, and it is neither predictable nor can it be guaranteed in future crises. Contingency planning should take place at a bilateral and regional level to ensure effective cooperation between states during evacuations of non-citizens from crisis situations.

### National responses are often inadequate:

One of the consequences of the fact that the rights of non-citizens during crises are not explicitly stated in international laws, conventions or relevant standards is that national laws and policies that often draw on international guidelines are equally mute on the rights of non-citizens during crises. Furthermore, many affected states lack the basic capacity to implement existing laws and policies during periods of crisis. The key findings of an evaluation of the humanitarian response to the displacement in South Africa in 2008 were that there was a lack of experience and of established systems; lack of government leadership especially in the early phases of the crisis;

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fragmentation of civil society; and confusion regarding the rights of displaced foreigners.<sup>2</sup>

Greater national capacity is required to protect and assist internally displaced persons – including non-citizens – during crises, ranging from establishing a response framework to a clear allocation of responsibilities, and consultation with affected citizens and non-citizens. There is a need to share experiences among states of origin and host states that have responded to the displacement of non-citizens in recent years.

More states should be encouraged to develop national laws and policies on the rights of internally displaced persons, including non-citizens. Existing national laws and policies should be updated to make explicit reference to the rights of displaced non-citizens. In this regard it is likely that states will be most willing to extend rights to those in a regular situation. Countries with large overseas worker populations should develop standard operating procedures for the protection of migrant workers during

crises, including detailed information on *in situ* protection measures, relocation, evacuation and repatriation procedures.

**In addition:** Pre-departure training for migrant workers should include contingency planning for crisis situations and micro-insurance schemes should be considered to assist migrants cope with emergency situations. And consular capacity should be developed to protect migrant workers and corporations that employ significant numbers of overseas nationals should develop standard operation procedures on protecting and evacuating workers, and establish risk assessment units and senior security officer positions.

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[www.brookings.edu/about/projects/idp](http://www.brookings.edu/about/projects/idp)

1. [www.iom.int/cms/mcof](http://www.iom.int/cms/mcof)

2. <http://tinyurl.com/Sa-violence-against-foreigners>