



Relationship between the MICIC Initiative And the Refugee Protection Regime

Introduction

The world has witnessed an increasing number of natural disasters and conflicts in which non-citizens, including migrants and refugees, asylum seekers, and stateless persons have been among those most seriously affected (e.g. in Libya in 2011, and more recently in Yemen). The Migrants in Countries in Crisis (MICIC) Initiative was launched to help States and other stakeholders to better protect migrants caught in a country experiencing a conflict or a natural disaster. Migrants have unique vulnerabilities in the context of crises—whether conflicts or natural disasters. International human rights law applies to all persons, including migrants, and States have obligations to respect, protect, and fulfill migrants’ human rights. But migrants caught in countries experiencing conflicts or natural disasters can be overlooked in responses. They are especially vulnerable to “falling through the cracks” of preparedness measures and emergency and post-crisis responses because they do not fall under a specific protection regime such as that for refugees and stateless persons.

Migrant or Refugee?

The 1951 Convention relating to the Status of Refugees and its 1967 Protocol set forth the legal protections and assistance that States agree to provide to refugees who are entitled to receive them. A refugee is a person who meets the eligibility criteria in the refugee definition provided by relevant international or regional refugee instruments, UNHCR’s mandate, and/or national legislation, as appropriate. According to the 1951 Convention and its 1967 Protocol, a refugee is a person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his or her country of nationality or habitual residence and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country. In addition, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness establish a legal framework to address the protection concerns faced by stateless persons. States providing assistance to non-citizens during conflicts or natural disasters should, where practicable and appropriate, identify refugees, asylum seekers, and stateless persons. States should aim to establish appropriate cross-referral mechanisms for refugees, asylum seekers, and stateless persons, as well as for migrants. Moreover, regardless of whether they are a party to the Refugee Convention or Protocol, States should implement specific safeguards to ensure that refugees and asylum seekers are protected against *refoulement*, including in the context of organized return.

The MICIC Initiative and UNHCR: A Relationship of Complementarity

The United Nations High Commissioner for Refugees (UNHCR) has been a member of the MICIC Initiative Working Group since its inception, providing valuable input and direction and helping to clarify the distinctions between the needs of migrants and refugees, asylum seekers, and stateless persons. UNHCR has contributed examples of effective practices based on its experiences in countries that have hosted asylum seekers and refugees, both in times of peace, and in times of crisis. The non-binding and voluntary MICIC Initiative “Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disasters” do not aim to replace existing legal frameworks that address the protection of refugees and stateless persons. Rather, the MICIC Initiative complements those existing protection frameworks. The Guidelines reference refugees, asylum seekers and stateless persons in a number of ways to promote this complementarity, including in relation to referrals, protection against *refoulement*, identification of vulnerable persons, and provision of identity documents.

The Need for Collaboration

In general, mixed migration patterns, characterized by asylum seekers and migrants sharing migratory routes, make it difficult for authorities to identify and protect refugees and asylum seekers. These challenges are amplified in times of crisis, including the situations of conflict and natural disaster that the MICIC Initiative aims to address, when national emergencies call for swift response. In these situations it is all the more difficult, yet just as important, that authorities correctly identify migrants in need of assistance and solutions. Refugees in a country of asylum as well as new asylum-seekers may also be caught up in such a crisis. Whenever possible, refugees and asylum seekers should be referred to State asylum mechanisms, or UNHCR, as the mandated refugee protection agency. Close collaboration with UNHCR is critical to ensure the access of asylum-seekers, who may be amongst migrants, to the UNHCR response mechanisms.

Efforts to develop better systems for access to asylum must go hand in hand with migration management. Asylum systems cannot function effectively without well-managed migration systems; and migration management will not work without functional cross-referral procedures (e.g. asylum seekers to State asylum mechanisms or UNHCR; victims of human trafficking or other non-refugee vulnerable migrants to IOM and other actors providing assistance).

Crisis-induced Pressure on Asylum Systems

In many cases, potential asylum-seekers do not request asylum in host countries, especially if they have obtained employment or other livelihood and believe that they are not in danger of *refoulement*, or return to their country of origin. When the country in which they are physically present experiences a crisis, such persons will be in need of access to asylum and protection. UNHCR seeks to ensure swift referral of these people--and of those who may submit a claim for asylum due to a change in their personal circumstances--as a result of the crisis.

It is essential to maintain the integrity of asylum systems in these situations. In UNHCR’s experience, the absence of a predictable response system for migrants in a country in crisis has a detrimental impact on national asylum systems. When migrants do not have access to basic assistance and protection in the midst of a crisis, they may take recourse to the asylum process in an effort to obtain shelter, medical aid and food, even though they may not qualify for refugee status. This burden on the asylum system in the affected country in crisis, or in neighboring states to which people flee, could undermine the effective processing of asylum claims.

Statelessness compounds vulnerability in a crisis situation where the State of habitual residence cannot protect people. The absence of a nationality will result in lack of repatriation options and consular protection as well as raise other protection concerns including the risk of protracted detention. UNHCR has a mandate to ensure the protection of stateless persons and for the prevention of statelessness. In countries experiencing natural disaster or conflict, stakeholders should collaborate to refer stateless persons to UNHCR for appropriate identification and solutions.

The UNHCR 10 Point Plan of Action for Refugee Protection

UNHCR has also developed a 10-Point Plan of Action on Refugee Protection and Mixed Migration, for support to States and other stakeholders in order to facilitate the protection of asylum-seekers and refugees in mixed migration flows. In particular, the 10-Point Plan of Action proposes mechanisms to distinguish between and meet the needs of various categories of persons travelling as part of mixed movements, including refugees and asylum-seekers, victims of trafficking, unaccompanied and separated children, persons with other international protection needs and others. The 10-Point Plan of Action is flexible and the mechanisms provided for, including notably the “profiling and referral” system, have been designed and used by UNHCR, together with the International Organization for Migration (IOM) and other partners, in the context of mixed movements in emergency situations. These provided the starting point for the Libya emergency response in 2011.