



ADDRESSING THE SITUATION OF MIGRANTS IN COUNTRIES IN CRISIS

Building upon the New York Declaration for Refugees and Migrants adopted on 19 September 2016, the Global Compact for Safe, Orderly and Regular Migration (GCM) will set out a range of principles, commitments and understandings among Member States regarding international migration in all its dimensions. The GCM should make an important contribution to global governance and enhance coordination on international migration. For the consideration of Member States, the “Thematic Papers” developed by IOM, outline core topics and suggestions to inform actors involved in the 2017 consultation process that will lead to the inter-governmental negotiations and final adoption of the GCM.

INTRODUCTION

The New York Declaration for Refugees and Migrants acknowledges the need to address situations of migrants in countries in crisis.¹ Conflicts, or natural and man-made disasters, are prompting a growing number of humanitarian crises to which no country is immune. While these crises can affect everyone in the concerned country, migrants are often disproportionately affected. This paper will therefore focus on the situation of migrants in crises – any non-citizen present in a country affected by a conflict or natural disaster, regardless of: (a) the means of or reasons for their entry into that country; (b) their immigration status; or (c) the length of or reasons for their stay in the country.

The objective of this paper is to outline the key challenges faced by migrants in the context of crises, and to make recommendations for concrete actions that should be included in the Global Compact for Migration to enhance the way States and other actors take into account migrants, and the protection and assistance they may need, when preparing for and responding to crises.

EXISTING PRINCIPLES

Normative Framework

While a variety of examples show that migrants often suffer disproportionately in crises, there has, until recently, been little focus on the roles and responsibilities of States and other actors to protect migrants in countries experiencing crises. In particular, no international legal instrument exists that covers explicitly and comprehensively the rights of people affected by a crisis while living, working, staying or transiting abroad. However, a number of international legal instruments and frameworks list obligations of States to protect the rights of people who live, work or stay outside their country of nationality. Implicitly or explicitly, these also apply in the event of a crisis, including:

- The nine core international human rights treaties;²
- Within the above and more specifically, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which provides for a number of rights (e.g. medical care, birth registration, repatriation of remains), which are key during crises;
- The Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, which define status and mandates of representatives of home countries posted abroad, and have a bearing on what personnel of the migrants’ country of nationality can do in order to assist their nationals abroad in crises; and



- International Humanitarian Law (four Geneva Conventions of 1949 and the 1977 First and Second Additional Protocols and customary law) which applies to all persons who do not or have ceased to take part in the hostilities, including migrants, recognizing them the right to leave the territory at the outset of, or during a conflict unless it is contrary to national interests, not to be forcibly displaced or to receive medical attention and hospital treatment, practice their religion, and move from dangerous areas to the same extent as the nationals of the affected State.

Several non-binding instruments also delineate human rights obligations applicable to migrants, such as the Universal Declaration of Human Rights, the Guiding Principles on Internal Displacement (applicable to migrants displaced from the place of their habitual residence inside a country that is not their own), and the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (in the case of migrant children). In addition, the non-binding Sendai Framework for Disaster Risk Reduction 2015–2030 includes provisions relevant to reducing the vulnerability of migrants in crisis situations, highlighting that migrants’ skills and knowledge should be integrated in disaster risk reduction activities, and that local authorities should be empowered to better work and coordinate with migrants to this end.³ Similarly, the Paris Agreement under the United Nations Framework Convention on Climate Change highlights that migrants’ rights should be promoted and respected in all actions to address climate change and its impacts.

Addressing the situations of migrants in countries in crisis as part of sustainable development

Addressing the situation of migrants in countries in crisis is integral to commitments made by States under the 2030 Agenda for Sustainable Development.⁴ Reducing migrants’ vulnerability to crises of all kinds contributes directly to achieving the following objectives and targets:

- SDG 1: End poverty in all its forms everywhere, by protecting the development gains linked with migration for the migrants themselves, their families and communities of origin, as well as communities of destination. This includes, in particular, reducing migrants’ exposure and vulnerability to social, economic and environmental shocks and disasters.
- SDG 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, by promoting secure working environments for migrant workers, ensuring access to decent jobs for migrants before and after crises, and preventing the risk of forced labour and trafficking in the context of crises.
- SDG 10: Reduce inequality within and among countries, by empowering migrants, regardless of their legal status, and improving their inclusion in their host communities, reducing discrimination they may suffer and ensuring that their movement before, during and after crises takes place in an orderly, safe, and well-managed manner.
- SDG 11: Make cities and human settlements inclusive, safe, resilient and sustainable, by ensuring migrant-inclusive, participatory and integrated planning and management of human settlements, and by reducing the human and economic losses vulnerable migrants might suffer as a consequence of disasters.
- SDG 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels, by reducing the impacts migrants might suffer as a consequence of all forms of violence, and by better including them in decision making processes at all levels before, during and after crises.



Efforts to reduce the vulnerability of migrants in crisis situations also contribute to achieving Objective 2 of the IOM Migration Governance Framework – to effectively address the mobility dimensions of crises. Such efforts need to be aligned with all three principles underpinning the Framework, namely:

- Adherence to international standards and the fulfilment of migrants' rights;
- Migration and related policies are best formulated using evidence and whole-of-government approaches; and
- Good migration governance relies on strong partnerships.

Reducing the vulnerability of migrants and managing the impacts they may suffer as a consequence of crises of all kinds are part and parcel of operational efforts to manage migration crises – as detailed in IOM's Migration Crisis Operational Frameworks (MCOF). MCOF provides a tool to identify areas of work and interventions that are relevant to these ends in anticipation, in the immediacy and in the aftermath of a crisis – such as, for instance, Emergency Consular Assistance, Delivery of basic assistance, Humanitarian Communications and Disaster Risk Reduction.

Guidelines to Protect Migrants in Countries experiencing Conflict of Natural Disaster

To help address the lack of clear provisions concerning the situation of migrants before, during and after crises, States and other actors recently concluded a global multi-stakeholder consultation process on the issue, which resulted in the Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster (MICIC Guidelines).⁵

The MICIC Guidelines do not create new international legal obligations, or limit or replace any existing frameworks. Instead, they provide practical, non-binding and voluntary guidance for States, private sector actors, international organizations, and civil society to protect and assist migrants before, during and after (potential) crisis situations. They include general principles (foundational, cross-cutting ideas that inform and guide actions by all stakeholders to protect migrants) along with 15 thematic guidelines (a set of targeted suggestions that identify actions needed to better protect migrants).

ISSUES

Trends and issues

Today, more people than ever before live in a country other than the one in which they were born, and every country in the world hosts migrant populations. In 2015, according to UN data, the number of international migrants surpassed 244 million, but many more people move to another country for short periods. Most migrants have a regular immigration status; but those in an irregular immigration situation are likely unaccounted for in international, national and local data. Another group not typically considered are nomadic, pastoralist, or indigenous populations who move across international borders as part of their traditional way of life.

Crises affect migrants in very different ways compared to a country's nationals. A number of recent emergencies have seen migrants particularly affected: the 2004 Indian Ocean tsunami, floods in Thailand in 2011, the earthquake, tsunami and nuclear accident in Japan in 2011, Hurricane Sandy in the United States 2012, as well as conflicts, such as the civil wars in Libya, and more recently in the Syrian Arab Republic and Yemen.

While migrants are most often resilient and resourceful individuals, a variety of factors create barriers to their access to resources, information and assistance before, during and after crises of all kinds, making



them particularly vulnerable to their impacts. These include language and cultural barriers; immigration status; isolation in residences and workplaces; exploitation by employers, recruiters and members of their host communities; lack of identity or travel documentation (which may be lost, destroyed or confiscated, and not easily renewed); arbitrary detention and restrictions to freedom of movement; and discrimination or social exclusion limiting their interaction with and trust in host country authorities. In the face of such barriers, migrants may not have sufficient and well-defined avenues to seek and obtain assistance and protection from relevant actors.

Host State actors may be unaware of the presence and needs of migrants, or their emergency and humanitarian response frameworks may be insufficient to protect and assist them. Similarly, States of origin may lack knowledge of the number, location or needs of their citizens abroad or insufficient capacity in the crisis-hit country to provide assistance. Migrants have traditionally also been a less visible target group in the international humanitarian system - unlike, for example, internally displaced persons or children, for whom specific provisions and responsible actors exist.

Thus, migrants affected by conflicts and disasters often “fall between the cracks” of response systems and do not receive adequate support. In addition, in the absence of assistance or secure pathways to leave the crisis-affected area, migrants may either become stranded in dangerous circumstances or forced to resort to risky routes to access safety. Migrants may therefore be exposed to further threats to life and physical integrity as well as abuse in the context of trafficking, smuggling or other exploitation.

Approaches in Host States

Crisis-affected States bear the primary responsibility to protect people in their territory, regardless of their nationality and migration status, and should address the specific needs of individuals facing specific conditions of vulnerability. This of course includes all migrant groups: almost all universal human rights instruments that contain a non-discrimination provision list national origin as one of the criteria for which discrimination is prohibited.

Many countries have adopted laws or regulations that require emergency management actors not to discriminate against affected persons on the ground of their nationality, origin, migration status or language proficiency (as well as other characteristics). And, even when the law does not expressly include such provisions, those actors often provide services in a non-discriminatory manner. Nevertheless, targeted, proactive measures are needed to ensure that emergency management efforts are prepared to assist diverse populations – including to raise the awareness and build the capacity of response personnel and actively include migrants in emergency management planning.

Migrants’ vulnerability in crises is largely dependent on their living conditions and access to services and resources in normal times. Whole-of-society approaches that include migrants, regardless of their legal status, not only enhance emergency planning, but also empower migrants by enabling their participation in decision-making, and reducing discrimination they may face.

Approaches in States of origin

States of origin have key responsibilities for ensuring the well-being of their citizens in host locations (e.g. through provision of information, services and assistance), and many of their institutions operate on the frontline in crisis situations, thus playing a key role in reducing migrants’ vulnerability during emergencies.



Consular assistance is the main institution that States of origin leverage in this regard. The Vienna Convention on Consular Relations (1963) provides that consular functions include, among other things, “protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law” and “helping and assisting nationals, both individuals and bodies corporate, of the sending State”.⁶ Most, but not all, consular functions are routinely performed in normal times and can be adapted to the circumstances of a crisis. However, States of origin do not always have the presence or capacity to protect their nationals abroad, and their ability to intervene to do so is subject to the consent of the affected State.

In addition, many countries of origin have set up mechanisms and capacities to specifically migrants’ vulnerability in times of crisis, such as emergency cells, rapid deployment teams, and delivery of emergency assistance. Given greater international mobility, it is likely that such systems might grow increasingly overstretched. Many States have therefore institutionalized measures that promote their citizens’ empowerment and self-reliance, such as pre-departure or post-arrival orientation and training, and/or mandatory or subsidized insurance mechanisms.

Gaps

The principal gaps and challenges that limit the effectiveness of efforts of home and host countries, and international and non-governmental actors supporting or complementing States’ efforts, include:

- A limited understanding of the size, composition, location, capacities and conditions of vulnerability of the migrant population in at-risk or crisis-affected areas, as migration data are not always accurate, up-to-date and comprehensive enough to effectively inform crisis management efforts.
- Lack of sufficient capacities, resources and active engagement of key institutions, such as emergency response actors of the host State or foreign and consular services of States of origin) to effectively prepare for and respond to crises. This often results in ad-hoc, nonsystematic, overly localized and unsustainable operational efforts.
- Unclear allocation of institutional responsibility in host and home States for assisting migrants caught in crisis.
- Lack of adequate coordination mechanisms among State institutions, as well as among State and non-State actors (including international organizations, the private sector, civil society organizations and migrant and diaspora organizations) to address the needs of migrants before, during and after crises more effectively.
- Limited consideration of migrants’ longer-term needs and challenges once the acute phase of a crisis subsides – and in particular for those who find themselves in an irregular situation.
- Migrants’ limited access to resources and services, and limited protection of their rights in non-crisis times, which can heighten their vulnerability in times of crisis. This is linked with xenophobia, discrimination and anti-migrant sentiments in host countries, and reflects on migrants’ often-limited access to local assistance networks, lack of trust in host communities and host authorities. These elements affect disproportionately migrants with irregular status and from marginalized groups.



Partners

While the main responsibility to protect migrants affected by crises rests with State actors, no single stakeholder alone has the capacity to effectively reduce their vulnerabilities and adequately assist them in the whole array of crisis situations they may face. Cooperation and coordination among a variety of actors is therefore paramount.

Coordination should include government institutions in host countries mandated with emergency management and recovery and those in countries of origin (e.g. foreign services, authorities in charge of supporting return and reintegration) and in third countries in which migrants may arrive due to crises (e.g. border and immigration authorities). Coordination mechanisms should also include local governments, as they tend to be most involved in the provision of essential services. International actors, in particular the international humanitarian organizations, have a role in complementing or supplementing State efforts in crisis preparedness, response and recovery. Coordination with private sector actors, both migrants' employers or recruiters and companies providing key services (e.g. short and long-distance transportation), as well as civil society organizations, is essential to effectively reach out to all migrants and secure adequate support. Last but not least, empowering migrants and their representatives, groups and organizations to effectively prepare for and respond to crises is a precondition both to strengthen their resilience and to minimize crises' impacts on migrants' home and host communities.

SUGGESTED ACTION

The following suggested actions draw on and summarize the above-mentioned *Guidelines to protect migrants in countries experiencing conflict or natural disaster*. They also cover a continuum of actions, starting from preparedness to potential crisis (1-6), to the emergency response (7-8), to addressing longer-term repercussions of crises for migrants (9-10).

- 1) Collect and share information on migrants and how they can be affected by crises.** To protect migrants when conflicts or natural disasters erupt, States and other actors need information about migrant populations. This includes data on numbers, location and characteristics of migrants to enable stakeholders to understand the needs in the case of a crisis and prepare for basic service delivery; information on the risks migrants face in their areas of transit and destination and what crises may affect such areas; and an understanding of regional, national, and local risks linked with natural hazards, conflicts and violence.
- 2) Include migrants in prevention, preparedness, and emergency response systems.** States and other stakeholders should take into account the presence of migrants and their conditions of vulnerability, capacities, and potential needs. Clear laws and policies on migrants' eligibility for assistance in crises promote certainty for both the migrants themselves and crisis responders. Migrants themselves and civil society may be in the best position to assist States and other stakeholders to appreciate the presence of migrants, their vulnerability, capacity, and needs. They have capacities and resources that can contribute to preparedness and emergency response, such as language abilities, first-hand knowledge of migrant populations, understanding of cultural norms, and a resulting ability to foster trust towards authorities.
- 3) Empower migrants to help and protect themselves, their families, and communities during and in the aftermath of crises.** States and other actors should promote migrants' resilience and



empower migrants to help themselves during and after a crisis by addressing underlying conditions of vulnerability. Respecting and protecting migrants' human and labour rights in ordinary times will mean migrants are better able to protect themselves and find assistance during crisis as well. Efforts should ensure that migrants are better included in, and connected with, their host communities, and able to access information, documentation, basic services, and redress mechanisms. Legal, policy, and operational factors that constrain protection should be addressed, including barriers that restrict the movement of migrants; enable arbitrary detention; limit or discourage registration of children of migrant parents; discriminate between migrants and citizens in the provision of humanitarian assistance; fail to separate immigration enforcement from service delivery, humanitarian assistance and the provision of identity documents; and that give rise to exploitative employment or recruitment practices.

- 4) **Build capacity and learn lessons for emergency response and post-crisis action.** Limited resources, funding, and technical skills can all affect the robustness of emergency and post-crisis responses. Stakeholders' investment in their own capacity to improve emergency response and post-crisis recovery for migrants is critical. Actors and areas that should be especially prepared to address the situation of migrants are consular services, emergency responders, and border management personnel. Adequate resource allocation and capacity building are key to this end. Stakeholders should also consider addressing potential return and reintegration challenges for migrants, their families and communities, if the crisis obliges migrants to return to countries of origin. Key issues here include facilitating re-employment, health insurance, income generation, and safe remigration options, and supporting migrants in claiming outstanding wages, assets, and property left in host States.
- 5) **Communicate effectively with migrants.** Migrants need to understand potential risks associated with a crisis, where and how to obtain assistance, and how to inform stakeholders of their needs. Stakeholders should find appropriate channels to communicate with migrants, to provide them with accurate and timely information on crisis risks, warnings, and entitlement to assistance during a crisis, and to identify their needs and capacities. To do so effectively, States, private sector actors, international organizations, and civil society should address potential language, cultural, religious and other barriers.
- 6) **Enhance coordination to leverage collective strengths and foster trust.** Partnerships, cooperation, and coordination are essential between and among States, private sector actors, international organizations, civil society, local communities, and migrants. Partnerships foster trust, enhance the effectiveness of limited resources and capacity, and improve responses.
- 7) **Provide assistance and protection to migrants without discrimination.** In the collective effort to protect migrants caught in countries experiencing conflicts or natural disasters, the humanitarian imperative is to save lives and alleviate suffering. Assistance should be provided to migrants alongside national populations on the basis of need, without discrimination, and regardless of immigration status, nationality, ethnicity, sex, gender, age, disability, or other differentiating characteristics. Migrants' needs will not remain static during the shifting dynamics of a crisis. For example, organized criminal networks may take advantage of marginalized migrants in a crisis, exacerbating their vulnerability. A change in circumstances in a migrant's State of origin may compel some people to seek asylum rather than return.



Stakeholders should ensure access to asylum procedures and protection in the host State or States of transit.

- 8) Facilitate migrants' ability to move to safety.** In the immediacy of a crisis, migrants, like other affected populations, may seek safety by evacuating within the host State to areas unaffected by the crisis or across borders to States of transit as a temporary haven. Migrants may also decide to return to their State of origin. States should facilitate access to valid identity and travel documents for migrants seeking to cross international borders to escape harm. States should waive restrictions or lift penalties for violating restrictions during a conflict or natural disaster to help save lives and improve migrants' access to help.
- 9) Support migrants to rebuild lives.** The dislocation and disruption created by conflicts or natural disasters can have severe consequences for the socioeconomic well-being of migrants and their families: income and remittances may be curtailed. Technical facilities to remit money can be disrupted. Currency devaluations and changes in exchange rates can affect migrants' savings and assets. Education opportunities for student migrants can be indefinitely suspended. Xenophobia and discrimination against migrants may increase. Post-crisis conditions in host States and States of transit may allow trafficking in persons and other exploitative activities to thrive. States should support migrants to reintegrate in their countries of origin or to rebuild their lives in their host countries. Like citizens, migrants' post-crisis needs should be factored into host State recovery plans and programmes at the national and local levels. States should consider reviewing immigration and visa rules to provide latitude for migrants who wish to remain in the host State to do so legally.
- 10) Support migrants' communities after a crisis.** Crisis preparedness, response and recovery interventions targeting migrants should be part of broader efforts to address the needs and conditions of vulnerability of the communities in which they live. If migrants receive assistance to the exclusion of members of host communities, perceptions relating to preferential treatment may create or exacerbate tensions. An inclusive approach to vulnerability reduction and crisis management actions that looks at the needs of migrants as part of their destination communities is more likely to succeed, and can foster community and social cohesiveness and stability in the long-term. Such support is also required in instances where migrants return home as a consequence of a crisis, in order to offset potentially negative impacts of loss of income and additional pressures on resources and services that might be associated with the rapid inflow of returning migrants.



ANNEX

Additional resources

Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster (available in all 6 UN languages):

http://micicinitiative.iom.int/sites/default/files/document/MICIC_Guidelines_english_web_13_09_2016.pdf.

IDM Migrants in crises: www.iom.int/cms/idmmigrantsincrisis.

MICIC Initiative, Background paper:

http://micicinitiative.iom.int/sites/default/files/General_Background%20Paper.pdf.

MICIC repository of practices: <http://micicinitiative.iom.int/micic-initiative-search>.

MICIC website: <http://micicinitiative.iom.int/>.

¹ UN General Assembly resolution 71/1, *New York Declaration for Refugees and Migrants* (3 October 2016), A/RES/71/1, Annex II, (III.n).

² The International Covenant on Economic, Social, and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention of the Rights of Persons with Disabilities.

³ Respectively paragraphs 7, 27(h) and 36 (a.vi) of the Sendai Framework for Disaster Risk Reduction 2015-2030

⁴ UN General Assembly resolution 70/1, *Transforming our world: the 2030 Agenda for Sustainable Development* (25 September 2015), A/RES/70/1.

⁵ Migrants In Countries In Crisis Initiative (2016) Guidelines to protect migrants in countries experiencing conflict or natural disaster. Geneva: Migrants In Countries In Crisis Initiative. Available at:

http://micicinitiative.iom.int/sites/default/files/document/micic_guidelines_english_web_13_09_2016.pdf. The

Guidelines are available in Arabic, Chinese, English, French, Russian and Spanish at

<https://micicinitiative.iom.int/guidelines>.

⁶ Art. 5 (a) and (e) of the Vienna Convention on Consular Relations (1963)