





CHAPTER 11

Vulnerable groups: Displaced Persons

Refugees, Aliens, Internally
Displaced Persons

Learning objectives for Chapter 11

After completing this chapter you should be able to:

- *Describe what is meant by a 'refugee' 'asylum seeker', 'non-national', and 'internally displaced person'*
- *Outline the human rights protections relating to these groups*
- *Explain why these groups need special protection from the police*



Chapter 11

Vulnerable Groups: Displaced Persons

(Refugees, Aliens and Internally Displaced Persons)

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11.1. Introduction

People have moved, or been moved, from place to place since the dawn of time, for all sorts of reasons (war, civil war, persecution, criminal activities or opportunities, natural disasters, drought, better economic opportunities), and not always by choice.

It is very important for police officers to be sensitised to the different categories of persons who are non-nationals, including asylum-seekers and refugees. Of course, international minimum standards will still apply to the treatment of all persons, nationals or not, even before their particular status is determined. This chapter examines the various categories of such vulnerable groups.

11.2. Non-nationals

Many countries host large numbers of foreigners, who may be fairly settled and contribute greatly and peacefully to the local life and economy. However, when times get harder, or high profile crimes are committed by non-citizens, this group are normally the first to feel pressure from the host population. Police are then often pressured to act in some way against these groups.

'Xenophobia' is defined as a deep dislike of non-nationals. It is often based on fear of the unknown and unfamiliar. Xenophobia may manifest itself in various ways, from derogatory names for foreigners, to discrimination, to violent attacks. It is also true that many countries have to deal with organised crime often run by foreigners. But it is clearly a myth that often tends to generalize foreigners or non-nationals as 'criminals'. Some of them may have been trafficked into the country and into forced prostitution (see the chapter on 'Vulnerable Groups: Women'). Such persons are already victims of a crime and ought not to be unduly victimised further. There is usually a lot of pressure from local citizens on the police to be tough on foreigners. This said, the way that the most vulnerable groups are treated, is a yardstick for measuring the commitment to democratic values of the specific State. The police have a part to play in raising community awareness and promoting harmony.

Non-nationals (migrants) are usually divided into two groups: documented migrants and undocumented migrants. These people are sometimes referred to as 'aliens' by government officials, and even in legislation.

Non-nationals are normally defined as persons who are not citizens of the country they are in. This is a broad definition (nationality and citizenship can be technical terms) and includes widely different groups, for example permitted non-citizen persons (permanent and temporary residents, asylum seekers, refugees) and prohibited persons (such as unauthorised migrants who are not seeking or have been determined ineligible for asylum/refugee status).

The police should have a very clear understanding of the different categories, and of the different legal regimes (international and national) that cover these categories of persons. It should be remembered as a matter of general approach that police have a very important role to play in relations with immigrant communities or non-national individuals. Aside from the fact that international law dictates minimum standards of treatment of persons whatever their legal status, police treatment of members of such groups can often directly contribute (positively or negatively) to their country's international relations with its neighbours.





11.3. Permitted persons

Such persons have the legal right or government permission to be in the country. Non-nationals lawfully within the territory may be expelled only if decided by law, if the decision is not arbitrary or discriminatory, and if procedural guarantees have been afforded.

11.3.1. Permanent residents

Such persons are also known as long-term residents and are people who have lived in a country for a long time and have been granted the right to live in that country on a permanent basis by the local authorities. This is the group of people who are normally issued with a permanent residence permit.

11.3.2. Temporary residents

Such persons are also known as 'legal migrants' and are permitted to reside in a country temporarily. The permit or visa (if required) will usually state the period and reason for which residence has been granted. Temporary residents usually enjoy the right to work. Holiday makers can sometimes be considered temporary residents but are normally thought of as visitors only.

11.3.3. Asylum seekers

This category is used to describe persons who have moved to a new country and intend to seek asylum (protection) or refugee status (permission to remain), on the basis that they have a 'well founded fear of persecution' in their own country because of their race, ethnic group, religion, nationality, political opinion or membership of a particular social group. An asylum seeker is someone yet to be considered for refugee status under immigration laws. In most legal systems, such a person will normally receive temporary permission to reside in the country, while his or her application to receive refugee status is being studied. Such persons may have entered the country unlawfully, but once they have submitted an application under the legal system, they are to be considered a permitted person, for that period of time until it is decided if the basis of their application (fear of persecution if returned) is well founded or not.

11.3.4. Refugees

While the term 'refugee' is used loosely, it describes a legal category of internationally protected persons under the Refugees Convention 1951. Police treatment of persons accepted in law as refugees should acknowledge this. Someone with decided refugee status is by definition in a vulnerable position, away from their known environment and usually in a destitute situation. Refugee children and women are particularly vulnerable and require special protection and treatment at times. See the section below for detailed discussion.

11.4. Prohibited persons

This group of people are usually those residing in the country illegally and have no authorisation to be there.

11.4.1. Unauthorised migrants

Popularly referred to as 'illegal aliens', these are people who have no permission to enter or to reside in the country. It is important to realise that although the legal and immigration status of these various categories of persons may differ, they are entitled to be treated in a manner that is consistent with their human dignity.



In arresting a non-national, a police officer has the same duty he or she has in any other circumstances to treat the suspect with respect and dignity. A non-national has the same rights as a citizen to be respected (except certain political rights, for example, the right to vote) and to be informed of his/her rights when being arrested and to have those rights respected and protected. Often, a police officer will not know the person's real legal or immigration status at the time of dealing with that person.

11.4.2. The role of police in dealing with irregular migrants

It is somewhat problematic to refer to the 'arrest' of a person suspected of being a prohibited person, irregular, or unauthorised migrant. In view of the fact that they are often not brought before a court, they are never, in law, actually arrested but rather apprehended. An inquiry will be conducted as a means of establishing whether such a person is an irregular migrant. Organisations like the International Organisation for Migration (IOM) can play an active role in identifying irregular migrants.

When a person is under investigation for being in the country illegally the following principles should always be taken into consideration:

- (1) All actions of public officials should be lawful.
- (2) Actions should be reasonable under the circumstances.
- (3) The correct and fair procedures should be followed.

Furthermore, the person who is subject to this investigation has other, additional rights:

- (1) the right to be given written reasons for being apprehended; and
- (2) the right to have the decision reviewed by a court.

If an irregular migrant commits a crime, he or she should be dealt with in the same way as police officers will deal with any other suspected criminal. These persons should have the same basic human rights as any other citizen who is suspected of committing a crime. If a person is suspected of being an irregular migrant and apprehended, they may be detained. They are entitled to the same minimum legal rights as other detained persons (see Chapter 4).

11.5. Refugees

The 1951 UN *Convention relating to the Status of Refugees and Stateless Persons* defines a refugee as:

"... a person who, owing to a well-founded fear of persecution on the grounds of race, religion, nationality, membership in a particular social group, or political opinion, is outside the country of his nationality, and is unable or, owing to such fear, is unwilling to return to his or her country of origin (or, if stateless, to his or her country of habitual residence)."

A person receives the special dispensation of refugee status when he or she is determined under national laws based on the *Refugees Convention* 1951 (or by the United Nations mechanisms) to have a well founded fear of persecution in his or her homeland. By conferring refugee status to a certain person, the State assumes the obligation to protect and receive the



person. Country practices tend to differ within the parameters of the Convention, but generally refugees may hold an exemption certificate and may be issued with travel documents, are entitled to travel within the country, work and attend school. Some countries even provide specific grants and benefits to refugees.

The rather legal definition of 'refugee' must be understood in the context of actual practice in relation to very large displacements of persons as a result of conflict. In countries with very large numbers of persons who have fled conflict or disaster elsewhere, the authorities might grant some form of temporary permission to remain in the country (or put aside strict immigration rules), because of the logistical problem of processing large numbers of persons.

11.5.1. Essential elements of refugee status

From the 1951 Convention definition above, in order to be recognised as a refugee, an asylum seeker must show that he or she has a well-founded fear of persecution based on one or more of five different grounds, including:

- (i) Political beliefs, where a person's political views are not tolerated and as a result has suffered or been threatened with persecution;
- (ii) Race or ethnic origins, in other words differential treatment based on colour, descent, national or ethnic origin;
- (iii) Membership of a social group, which normally comprises of persons of similar background, habits or social standards who have suffered persecution because of their membership, for example women or trade unions;
- (iv) Religious beliefs, for example preventing people to worship or from receiving religious instruction; and that he/she is outside his or her country of origin, and is not protected by his/her country of origin, either because it's unable or unwilling to protect him or her; or
- (v) that he/she was compelled to flee his or her country in order to seek refuge in another country as a result of:
 - (1) external aggression;
 - (2) occupation;
 - (3) foreign domination; or
 - (4) events seriously disturbing public order.

11.5.2. Who cannot be a refugee? When does the status cease?

There are, however, certain categories of persons who will not qualify for refugee status, and this would include those who have committed:

- (i) crimes against peace, for example planning and initiating a war of aggression;
- (ii) war crimes, for example murder, torture, wanton destruction of property during war time;
- (iii) crimes against humanity, same as war crimes just on a bigger scale;
- (iv) genocide;
- (v) serious non-political crimes outside his or her country which if committed in that country would lead to imprisonment; or

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- (vi) acts contrary to the object and principles of the UN, for example drug trafficking; or
 - (vii) enjoys the protection of a safe third country.

The point at which a refugee loses his or her refugee status or protection is called cessation. This normally happens as a result of certain events or changes that have taken place in his/her country of origin but can also occur as a consequence of certain acts.

In this regard a refugee's status may be withdrawn for the following reasons:

Voluntary acts of a refugee who:

- voluntarily obtains the protection or nationality of his or her country of origin; or
- obtains the nationality of a new country; or
- voluntarily returns to the country where he/she felt in fear, and takes up residence there with the intention to settle permanently.

Involuntary acts when:

- A refugee cannot refuse to return to his or her country of origin, or to take on the protection of that country again because the circumstances in that country have changed to the extent that the reasons for the risk of persecution no longer exist.

11.5.3. The rights of a refugee

- Refugees have the right to seek, and if appropriate to enjoy, in another country, asylum from persecution.
- Refugees are entitled to all basic human rights, with the exception of certain political rights, but, if unlawfully within the territory, certain limitations on movements may be applied in the interests of public order and health.
- Refugees shall be given treatment which is at least as favourable as that given to nationals in the exercise of basic rights, such as free association; religion; elementary education; public relief; access to courts; property; and housing.

There is a clear relationship between the refugee problem and the issue of human rights. Violations of human rights are not only among the major causes of mass exoduses, but also rule out the option of voluntary repatriation for as long as they persist. Violations of rights of minorities and ethnic conflicts are increasingly at the source of both mass exoduses and internal displacements.

Disregard for the minimum rights of refugees and internally displaced persons are another dimension of the relationship between the two issues. Refugees have rights which should be respected prior to, during, and after the process of seeking asylum.

11.5.4. International principles applicable to refugees

- No one shall be returned to a country where his or her life or freedom would be threatened, or where he or she would be persecuted, nor to a third country likely to return the refugee to such a country.





- Refugees unlawfully within the territory of a state, who have come directly from a country of persecution and who present themselves without delay to the authorities, shall not be penalised.
- Refugees coming directly from a country of persecution shall not be refused at least temporary entry.
- Refugees lawfully in the territory of a state have the right to freedom of movement and residence.
- Persons seeking asylum should be informed of the necessary procedures, shall be provided with the necessary facilities to do so, and shall be allowed to remain pending a final decision.
- No refugee shall be expelled except on grounds of national security or public order, and only on the basis of a decision reached in accordance with due process of law.
- Before expulsion, a refugee shall be given an opportunity to offer evidence, to be represented, and to appeal to a higher authority.

11.6. Internally Displaced Persons

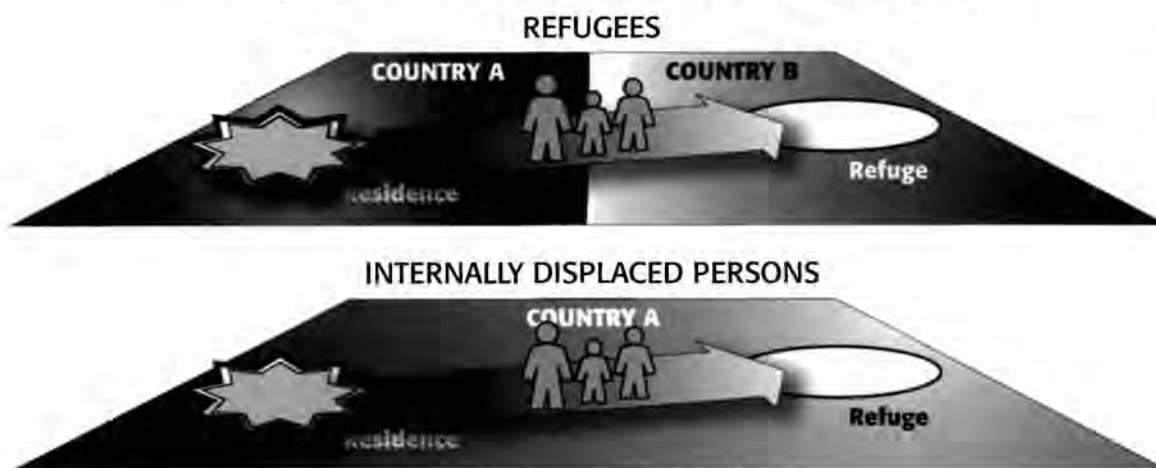
In the case of internally displaced persons (IDPs), police officers deal with citizens of their own country. Many factors, sometimes in combination, create IDPs. The most important are internal armed conflicts, economic upheaval and natural or environmental disasters, such as earthquakes and tsunamis. Most of the millions of persons displaced by these forces endure squalid conditions and disease, daily hardships to obtain basic necessities, and the threat of violence from locals. IDPs are a major issue in some countries, including in some Commonwealth member countries. There are no reliable statistics, but it is usually estimated that there are one and a half times the number of IDPs as refugees. It is important to sensitise police officers to the special care needs of IDPs as another vulnerable group in society.

The United Nations' 1998 *Guiding Principles on Internal Displacement* defines internally displaced persons (IDPs) as:

"Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence suddenly or unexpectedly as a result of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border."

The main difference between IDPs and refugees is that IDPs keep within the borders of their own country, whereas refugees cross national borders into other countries. When dealing with IDPs, police are working with citizens of their own countries. However, most of the human rights standards applicable are the same.

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11.6.1 The rights of Internally Displaced Persons (IDPs)

The 1998 Guidelines provide for the following IDP rights, among others:

- IDPs enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
- National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.
- The application of the principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
- Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition, and to treatment which takes into account their special needs.
- Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

The prohibition of arbitrary displacement includes displacement:

- (a) when it is based on policies of apartheid, 'ethnic cleansing' or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;



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- (b) in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (c) in cases of large-scale development projects, which are not justified by compelling and overriding public interests;
 - (d) in cases of disasters, unless the safety and health of those affected requires their evacuation; and
 - (e) when it is used as a collective punishment.

Under other international provisions, States may be under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

11.6.2 Responsibilities of police officers towards IDPs

Because, like other vulnerable persons, law enforcement officials are most often the first point of contact between a refugee and a receiving state, it is of the utmost importance that law enforcement officials are aware of the rights of refugees and IDPs:

- Law enforcement officials must be aware of the fact that these persons remain nationals of their country of residence and that they remain fully entitled to all the rights and protection of national and international law as if they were still in their homes.
 - Law enforcement officials are to respect and protect human dignity and to maintain and uphold the human rights of all persons, without any adverse distinction. It is at the hands of individual law enforcement officials to implement this rule and to make it a truth in practice rather than a theoretical notion.
 - In their functions, the police officers must know that IDPs should be protected against attacks from outside the group, and protected within the group.
 - Police officers must know and apply the principle that internally displaced persons shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
 - Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
 - Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.
 - Police should be conscious that although some limits are justifiable in the interests of public health and order, in general IDPs have a right to move freely in and out of camps or other settlements, the right to seek safety in another part of the country, the right to
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leave their country, the right to seek asylum in another country, and the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

11.7. Summary

The police play a key role in ensuring that human rights of all persons are respected and protected: especially when dealing with foreigners, as they represent the State and should conduct themselves in the highest standard of behaviour. Many non-nationals who come into contact with police, whether as victim or witness or suspect, are possibly in a situation of great vulnerability. It is also important for police officers to know how to treat IDPs, and the protective nature of their duty in relation to them, in order to prevent re-victimisation of them in their already vulnerable situation. Police who violate the human rights of non-nationals or certain displaced national groups may also seriously contribute to regional or provincial tensions that increase the chances of armed conflict.

It is clear how the various principles set out in this chapter should inform police policies and conduct in relation to such persons. It is therefore very important for trainers to ensure police have a clear understanding that the treatment of non-nationals is something of direct concern to the international community and is covered in various ways by international law.

The primary issue is for police officers to be aware that while there are different legal categories of non-nationals and displaced persons, from a policing and human rights perspective the same international minimum standards of treatment always apply. Also, persons in these groups are particularly vulnerable.

11.8. Questions for self-evaluation

- *Define a refugee. Name four international principles regarding refugees.*
- *How should police officers deal with a non-national who has committed a crime? Why should all non-nationals be treated with dignity?*
- *How should police officers treat IDPs?*

