

The Role of IDP Law and Policy in Fostering Responsibility and Accountability of Governments

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This briefing assesses the role of national legislation and regional frameworks in fostering the responsibility and accountability of governments on internal displacement, drawing on an analysis of concrete examples and existing studies.

1. The adoption and scope of laws on internal displacement

The non-binding Guiding Principles on Internal Displacement (Guiding Principles) provide internally displaced persons (IDPs) with both international recognition and describe their existing rights in international human rights and humanitarian law. Over the last decades, they have emerged as an important reference point on IDP protection and assistance.¹ Key international organizations including the UN General Assembly have encouraged States also to develop their own domestic legislation and policies on internal displacement and the multi-stakeholder GP20 Plan of Action has included the promotion, development, and implementation of national frameworks to prevent and address internal displacement as a key priority.

Between 1992 and 2020, 43 States with current or past situations of conflict-induced displacement adopted domestic laws and policies on internal displacement, acknowledging their primary responsibility to assist and protect their internally displaced populations. However, while these laws and policies generally establish that IDPs are protected by domestic and international laws, they are less likely to reflect key aspects of the Guiding Principles including its definition and principles on durable solutions. International support during the drafting process does improve domestic instruments' concordance with the Guiding Principles, as do other steps such as the African Union's Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa, which was introduced in 2018.

Out of the 72 laws and major policies reviewed, 44 explicitly noted that IDPs are protected by international law, and 44 explicitly acknowledge IDPs are protected by domestic laws such as a State's constitution. However, only 32 laws and policies explicitly mention the Guiding Principles, and only 21 explicitly endorse its IDP definition. Instead, domestic IDP definitions are frequently limited in three ways: (i) *Explicitly to citizens*, e.g. Republic of the Sudan's 2009 National Policy; (ii) *To specific time periods*, e.g. Kosovo applying its *Strategy for Communities and Returns* only to people displaced between January 1998 and end of March 2004; and (iii) *To specific geographic areas*, e.g. emphasis on Kyrgyzstan policy framework that it applies to citizens whose homes were destroyed in June 2010 in two areas of the country.

How these laws and policies address durable solutions (including return, reintegration, and resettlement) also remains narrower than in the Guiding Principles. Even so, on a positive level, there is increasing involvement of IDPs in planning and legal decision-making. Ethiopia's 2017-2020 Durable Solutions Strategy for the Somali Region notes explicitly that 'IDPs, returnees, host community representatives, community leaders, faith-based groups and local government officials need to be fully involved in the planning and implementation of interventions, with specific attention to promoting gender equality.'

However, many of the laws and policies tend to prioritise or exclusively focus on IDP returns, such as: Iraq's 2008 *National Policy* is return-focused even though many IDPs have expressed preferences to resettle or integrate into their host communities; In Afghanistan, there has been significant reluctance to countenance local integration by the population; And, in the case of Colombia, returns were politically exigent as it demonstrated that the government was winning the war

against the guerrilla organisations.

Further, effectively resolving issues relating to housing, land and property rights is integral to fostering durable solutions. At the regional level, the Kampala Convention provides a good model with its article 11(4) which requires States to 'establish appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of internally displaced persons.' This has led to Somalia, for example, introducing in late 2019 a new National Policy on Refugee Returnees and Internally Displaced Persons, along with a new set of National Evictions Guidelines.

Finally, and most crucially for the present purposes, implementation of these IDP laws and policies is frequently incomplete. Less than a third of the laws and policies adopted prior to 2018 have been 'implemented in a consistent manner, and even in those cases there are issues of alignment with international standards.'² Implementation may stall out for three reasons: a lack of state capacity, a lack of political will, or the existence of domestic opposition within and outside of government. Strikingly, while international involvement in the drafting process improves the content of domestic laws and policies, it does not appear to significantly affect implementation rates, with only one third (13 out of 33 laws and policies drafted with such assistance) being robustly implemented.

2. Trigger points that promote successful implementation

What, therefore, is more likely to lead to successful implementation of these laws and policies? We have identified two sets of trigger points – *contextual factors* and *independent actors at various levels of governance* – which can be critical.

Contextual factors can be critical in generating the political will necessary to lead to successful policy implementation. Three main factors have particular importance: timing, peace agreements and linkages with other regional and international processes.

- *Timing*: A significant number of IDP laws and policies are introduced within two years of initial onset of internal displacement. This reflects political will to prioritise the issue and also a significant level of attention at domestic and global levels. Croatia, for instance, created an office to provide assistance to IDPs in 1991, the same year its war of independence began, and within two years had created a clear legislative framework.
- *Peace agreements*: The specific inclusion of IDP issues within peace agreements tends to lead to the subsequent successful introduction of laws and policies. However, these processes need to be carefully managed as a number of peace agreements in the early in 2000s –including in Burundi in 2000 and Angola in 2002– peace saw large scale spontaneous returns and then subsequent disengagement by the government as the issue became a lower priority.
- *Linkages with other regional and international processes* can create external pressures for implementation. In Croatia, previously discriminatory laws and policies were modified due to EU pressure through Croatia's accession process. The existence of the Kampala Convention in the African region has also led to significant action in some AU member states, however, this has not been across board.

Successful implementation is also frequently marked by the engagement of *independent actors* within the State that provide a direct accountability mechanism. These can include two types:

- *Independent domestic institutions* including the judiciary, national human rights institutions, and legislatures can play important roles. In Colombia and Georgia, for instance, courts have pushed governmental action. In Nigeria, the former Chairperson of the House of Representatives Committee on IDPs played a key role in advancing their draft national law on internal displacement.
- *Civil society organizations* can also play key roles in ensuring laws and policies are introduced and then fully implemented. In the Philippines, civil society organizations along with members of the Congress of the Philippines have remained committed to passing legislation for IDP protection since 2013. These groups can also successfully form linkages with international and regional networks to promote IDP recognition, as occurred in Colombia in the early 1990s.

Finally, the role of *international actors* can also be critical. The involvement of these actors has become an important element in many States' drafting processes. But ongoing international support during the implementation process is equally critical for two reasons:

- *To backstop State efforts* by assisting in the development of capacity at the national and local levels through financial support and training operations.
- *To identify and support other domestic actors* through training programs and capacity building in order to ensure their involvement in the implementation process, such as through the African Union (AU) Humanitarian Law and Policy Training Program.

3. Conclusions

The adoption of national legal and policy frameworks on internal displacement reflects an important level of recognition and support by States of their internally displaced populations. International actors, such as the UN General Assembly, and regional actors, such as the African Union, have played an important role in encouraging the development of new laws and policies where these are needed. Continuing to promote and support these processes, in line with the GP20 Plan of Action, remains an important first step in preventing and addressing internal displacement. Toward this end, the creation of a permanent technical support team, housed either within the Special Rapporteur's office or the Global Protection Cluster, to support these efforts with dedicated expertise should be considered.

However, the adoption of laws and policies is only a first step. Political will to implement those frameworks effectively also needs to exist. Toward that end, this paper has identified a range of important trigger points that can help to generate States accountability and the practical responsibility to effectively implement IDP law and policy on an ongoing basis. Thus, political will can be galvanised by making or reinforcing certain links between the implementation of IDP law or policy and wider contextual factors that structure the political dynamics of the States concerned. In tandem, greater accountability towards IDP populations is often promoted through the work of domestic actors, such as independent institutions and civil society organisations, as well as consistent support from the international community.