

Submission to the UN Secretary General's High-Level Panel on Internal Displacement

The Role of National Legislation and Policies in Protecting Internally Displaced Persons

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This submission summarizes implementation data gathered by the author on domestic IDP policies and laws introduced by some forty States between 1992 and 2017. Based on a desk analysis of these laws and policies, it concludes that while the content of these laws and policies have improved significantly over this time span, including through international support, implementation of these laws and policies have lagged. Only one third have been fully implemented. Critical to successful implementation are four factors: timing; independent domestic institutions and democratic electoral systems to ensure accountability; linkages to other processes; and international support throughout the implementation process. Therefore, there is a role for international actors to support these processes and improve the rates of successful implementation of such instruments.

Analysis of Laws and Policies

Between 1993 and 2017, forty States passed laws and policies directly related to internal displacement, the significant majority since the Guiding Principles have been adopted (see Table 1 below). This is a process which has been encouraged by the United Nations General Assembly since 2008,² and UNHCR has also noted that as part of its specific commitment to IDPs, it supports "States' efforts to adopt, update, or prepare national policies on IDPs."³

Within this set of domestic laws and policies, there is clear acceptance that IDPs require some form of international protection. Not only do a majority provide for the provision of international assistance (46 laws and policies), but 41 laws and policies also note explicitly that IDPs are protected by international law, and 41 also note that they are also protected by some form of domestic law such as a State's constitution. However, this widespread acceptance may reflect state understanding of either international treaty law (which reflects these concepts) or protections within their own formal domestic legislation.

By contrast, only 30 explicitly mention the guiding principles, and only 19 explicitly endorse its IDP definition. Instead, many instruments either do not define IDPs, or define them in a limited way as either encompassing fewer causes than the Principles' definition or by introducing geographic or

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² UNGA Resolution "Protection of and assistance to internally displaced persons," A/RES/62/153, 6 Mar 2008, 4.

³ UNHCR, "Global Report 2013," (Geneva: UNHCR, 2014), 72.

Table 1: Introduction of Domestic Laws and Policies, 1993-2017⁴

State	Year First Introduced	State	Year First Introduced
Afghanistan	2005	Mexico	2012
Angola	2001	Nepal	2004 (draft)
Armenia	1998	Nigeria	2012 (draft)
Azerbaijan	1999	Peru	2004
Bosnia Herzegovina	1995	Philippines	2013 (draft)
Burundi	2000	Russia	1993
Central African Republic	2014 (draft)	Serbia	2002
Colombia	1997	Sierra Leone	2001
Croatia	1993	Somalia	2014
Democratic Republic of Congo	2014 (draft)	South Sudan	2011
Georgia	1996	Sri Lanka	2002
Guatemala	1994	Sudan	2009
India	(2004	Tajikistan	1994
Indonesia	2001)	Timor-Leste	2007
Iraq	2008	Turkey	2005
Kenya	2012	Uganda	2004
Kosovo	2009	Ukraine	2014
Kyrgyzstan	2010	Yemen	2013
Lebanon	1993	Zambia	2013
Liberia	2002	Zimbabwe	2008

temporal limitations. Thus the Kyrgyz government’s national policy only notes that it applies to citizens whose homes were destroyed in June 2010 in two areas of the country. Kosovo has adopted the Principles’ definition, but applies it only to people displaced between January 1998 and the end of March 2004. Bosnia’s 1999 law covered only citizens who had fled after April 1991 for reasons similar to the Refugee Convention’s nexus clause. Ukraine’s first IDP resolution in 2014 required IDPs to be citizens and permanent residents who had come from temporarily occupied territory.

A further issue is that while many laws and policies have some focus on durable solutions, they have a tendency to prioritize returns over other forms of solutions. To give a few examples, while Angola was the first country to bring the Guiding Principles into domestic law, in practice there was widespread forced return of IDPs following the end of the war in 2002 and little support provided on a long term basis for returnees. While Kosovo also adopted strategies aligned with the Guiding Principles, it too focused on returns, a standard started by the UN Mission. Liberia’s policy similarly focused on returns, and only provided return assistance to IDPs who had been registered in camps by the WFP for food distribution purposes. Iraq’s national policy is return focused even though many IDPs have expressed preferences to resettle or integrate into their host communities. Not only did the Armenian government prioritize returns over other forms of solutions, but they have not undertaken a new survey since 2004 with the result that no one knows how many IDPs may remain. Turkey’s national IDP strategy prioritizes returns, though it does allow for assistance and support for integration into new areas. And Georgia only slowly shifted away from prioritizing IDP returns, fully

⁴ Since the analysis was concluded, Niger (2018) and El Salvador (2020) have also introduced laws on internal displacement.

implementing its 2007 State Strategy only after the 2008 Russo-Georgian War ended the likelihood of significant IDP returns.

Issues over property rights can also lead return and other durable solution processes to stall out. In Bosnia, for example, there was a significant international focus on IDP returns, however there was lack of funding for reconstruction; court rulings significantly increased the costs for IDPs to recover property; and minority returnees frequently faced discrimination and reprisals.

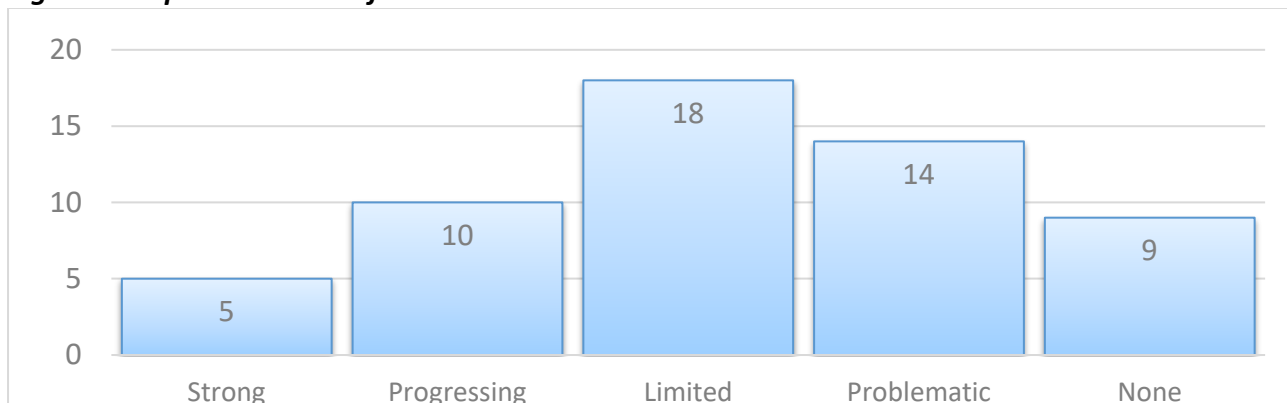
Implementation Issues

Beyond their content, there is the question of whether or not these policies and laws are actually implemented, reflected in the final column of the table. Here, too, the record is problematic, with many laws and policies not receiving full implementation. The author has gauged implementation on five point scale from strong (reflecting clear and ongoing support) to no (where laws or policies have stalled out). Less than a third of these instruments have been implemented without significant issues (see Figure 1 below). More often, ad hoc or limited implementation means that IDPs are not adequately covered and that even when problems are correctly identified, there are no steps taken to fix them, or that good faith efforts to introduce laws and policies are stymied by domestic opposition. In nine cases, the laws or policies have never been implemented, either remaining in draft form for years or simply reflecting aspirational claims which the government was unable or unwilling to follow.

Most policies and laws also clearly indicate a government bureaucracy which will take a lead role in assisting and protecting IDPs, which are either existing bureaucracies being assigned a new role, or which see new bureaucracies being established to fulfil this role. But these bodies are frequently underfunded, under-resourced, and lack clear lines of authority within government.

Further, while international support has become an important element in many States' drafting processes and tends to lead to better laws and policies, it has had less effect on implementation rates. Of the 30 laws and policies which mention the Guiding Principles, 18 were drafted with international support. Of the 18 which use the GPs definition, 15 were drafted with international support. However, such support does not appear to improve the rate of implementation at all. Of the 33 laws and policies drafted with such assistance, only thirteen have been robustly implemented (either strong or progressing on the five point scale). An equal number -13- have had significant implementation issues, and 7 of those laws and policies have not been implemented at all.

Figure 1: Implementation of Laws and Policies



How Can We Improve Implementation?

While the overall implementation picture is mixed, a number of States have successfully implemented their own IDP legislation and policies. Across these cases, four important factors are clear: timing; the involvement of independent domestic institutions; clear linkages to other regional and international processes; and, finally, ongoing international support.

First, *timing can be critical*. Successful laws and policies tend to be introduced for two reasons: early response and peace agreements. Not surprisingly, a number of laws and policies are introduced within two years of the initial onset of internal displacement. This reflects governments which recognize the need for a response and prioritize clear policy for guidance. But it also recognizes a high level of attention given to the crisis at both domestic and international levels. For example, in Croatia the government had 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. In Ukraine, the government's first efforts occurred within months of the outbreak of conflict, and it has continued to amend its laws and regulations following domestic and international concerns. Like with Ukraine, policies can also be introduced to acknowledged failures in the initial response efforts. Thus, Kenya's government drafted a new policy in 2010 in response to inadequate and uncoordinated responses to the post-election violence in 2007 and 2008; while this policy did not end being approved, the government introduced new legislation in 2012 to ensure national-level coordination.

Peace agreements also can lead to successful implementation, but here the picture can be more complex. While this has led to a number of robust records of implementation, this also reflects high rates of assisted and spontaneous returns following the end of conflict. Liberia committed to its National Community Resettlement and Reintegration Strategy in 2002, the year after the Accra Comprehensive Peace Agreement was signed, but it was successful because the end of the war triggered large scale supported and spontaneous returns, with the vast majority of IDPs having returned by 2006. Similarly, Sierra Leone's resettlement strategy was introduced in October 2001, three months before fighting in its civil war would end but following a series of agreements between the government and rebels. There too a high rate of returns meant its official program was completed within a year through a combination of supported and spontaneous returns.

Without fast returns, however, commitments in peace agreements can languish or be ignored as governments shift to new priorities. In Angola following the 2002 peace agreement, new implementing regulations were quickly introduced to ensure implementation of its 2001 Norms for the Resettlement of Internally Displaced Persons. But while large scale returns did occur, the government demonstrated little commitment to its own policies. Similarly, Burundi's Arusha Accords explicitly committed the government to encourage IDP return, resettlement, and reintegration, but these commitments were widely ignored over the following years except for the encouragement of some return efforts. In Guatemala, an agreement to resettle those displaced by the civil war, signed as part of the wider peace process, gradually ran into difficulties as the government moved away from IDP-specific processes to target poor populations as a whole.

In addition, successful implementation is frequently marked by *independent domestic institutions* that can support the process and serve as accountability checks through monitoring, providing independent information and, where possible, seeking to ensure the government follows the outlined process. These institutions include the courts and national human rights institutions, but

also national and local NGOs and other civil society organizations. With respect to the role of the Courts, Colombia's Constitutional Court has played a critical role in ensuring that the government amend legislation and improve data gathering. Similarly in Georgia, its Constitutional Court pushed the government to amend legislation to include all people who had been displaced by armed conflict as IDPs, not just those in occupied territories. Demonstrating also the importance of civil society, this action was begun by the Georgian Young Lawyers' Association, and the ensuing legislation has been monitored by Georgia's Public Defender. In the Philippines, local civil society actors continue to push for IDP legislation with support from politicians in Congress. The role of elections also matter. Sri Lanka's response improved significantly following its 2015 elections.

Linkages with other regional and international processes can help support these processes. In Croatia, for example, laws and policies were deliberately implemented in a discriminatory manner towards displaced Serbs, a problem that was resolved due to EU pressure through Croatia's accession process. In Uganda, policy implementation efforts sped up considerably after the government was directly called out by the UN Security Council to renew its commitment. But, once again, these linkages may not be enough on their own. A number of governments in Africa have also made commitments to national level laws and policies as a part of either the Great Lakes or Kampala processes, but in several cases including DRC these remain in draft form.

Finally, *international support mechanisms need to be provided on an ongoing basis*. International support during the drafting process does improve the content of these laws and policies and should be continued. At the same time, ongoing international support during the implementation process is equally critical for two reasons. First, it can backstop State efforts and make up for an initial lack of capacity and then help to build that capacity at the national and local levels. This requires direct financial support to governments to assist them and, importantly, to create their own capacity, rather than having international organizations simply parachute into government, draft policies, and then leave. It also requires building government capacity at the national and local levels. This needs to include international efforts to identify and support lead ministries involved in the roll out of these laws and policies. It also means ensuring that government officials receive training on how these instruments work. International support can also be used to identify and support other domestic actors both within government and within civil society who are positioned to ensure state accountability. Here, too, a similar framework of first training, and then capacity building, can play important roles in ensuring that these organizations can help assist the implementation process.

Conclusions and Recommendations

Given the soft law framework of the Guiding Principles on Internal Displacement, efforts to introduce laws and policies for IDPs at the domestic level are critical to ensure that they receive protection and assistance. Yet, while the introduction of such instruments is a positive development, too often there is a failure to then follow through and ensure they are properly implemented.

While we have forty states with policies and laws, the record on these remain mixed not only in terms of how (and even whether) they reflect the Guiding Principles, but also in how they are or are not being implemented. In only twelve of those states have these policies and laws been implemented in a consistent manner, and even in those cases there are issues of alignment with international standards. Further, there is a clear disconnect between international efforts and these domestic

policies and laws – while creating them is a core objective of UNHCR and other UN-based agencies, too often there is a lack of follow-through, or even engagement with governments around them.

Successful implementation is linked both to state capacity but also the presence of independent accountability mechanisms. Therefore, there is a role for international actors to support these processes and improve the rates of successful implementation of such instruments:

- UN agencies (including UNHCR, UNDP, and OCHA) along with NGOs working on IDP issues (including the International Committee of the Red Cross and the Norwegian Refugee Council) should support states with IDP populations to develop their own laws and policies which reflect the Guiding Principles, including a clear durable solutions framework.
- Beyond assisting with the drafting process, these actors can also continue to assist governments in implementing their existing instruments. This support should include:
 - Capacity building in lead ministries for development of the legislation and policies as well as internal procedures;
 - Support to ensure dissemination of new instruments across government and down to the local level;
 - Building up a training capacity for government officials on the instruments and their applicability;
 - Create structures within government to ensure that IDPs have access to dispute and settlement mechanisms;
 - Ensure that these instruments create transparent registration systems and track IDPs and their receipt of durable solutions.
- On a case by case basis, these actors, liaising with specific UN country teams, should identify domestic institutions –such as the courts or national human rights institutions - and other non-governmental and civil society actors be involved in these processes.
 - These institutions and actors should similarly be provided with capacity building and training within both the initial policy development phase and the subsequent implementation phase.
 - Depending on their roles, such capacity building can include support to ensure ongoing monitoring of policy implementation including ensuring IDP rights are being respected; ensuring IDPs have access to dispute and settlement mechanisms; and adjudicating disputes.