



Policy Paper on Internally Displaced Persons

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The Jesuit Refugee Service (JRS) accompanies, serves, and advocates the cause of internally displaced persons (IDPs) in 14 countries¹ through the implementation of education services, psychosocial support, peacebuilding, pastoral activities, training in modern agricultural techniques, and mediation to settle land disputes and other conflicts.

In 1998, the first Representative of the Secretary General on Internally Displaced Persons presented 30 *Guiding Principles on Internal Displacement* to the UN Commission on Human Rights. The Guiding Principles have become the cornerstone of the normative framework for the protection of IDPs.

The Guiding Principles assisted many states in their responses to internal displacement and have been incorporated into many national policies and laws. However, the scale of internal displacement remains vast.

The 20th anniversary of the Guiding Principles and the GP20² campaign covering 2018-2020, provide an opportunity to reflect on the limitations of the current legal framework, refocus attention on the vulnerability of IDPs, and open up the potential for new understandings, approaches and technologies.

The Issue

Internal displacement refers to the forced movement of people *within* a state. Today, 41.3³ million people – IDPs – have been forced to flee their homes or places of habitual residence as a result of internal conflict, generalised violence, infrastructure or urban development projects, and increasingly disasters or climate change. Most of these IDPs live in situations of protracted displacement or face chronic displacement risk. Since they have not crossed an internationally recognised border, the primary responsibility for their protection remains with their own state.

Though technically a state responsibility, the situation of IDPs came to the attention of the international community in the 1990s and 2000s with the surge in the numbers of displaced people following the end of the Cold War. Along with the emergence of the doctrines of ‘Humanitarian Intervention’ and the ‘Responsibility to Protect’, thinking on state sovereignty was shifting, such that the internal affairs of states were no longer considered beyond the scope of international scrutiny.

¹ Myanmar; Philippines; South Sudan; Burundi; Democratic Republic of Congo; Central African Republic; Nigeria; Ukraine, Colombia; Venezuela; Mexico; Iraq; Syria and Afghanistan.

² *Plan of Action for Advancing Prevention, Protection and Solutions for Internally Displaced People 2018–2020* (GP20): http://www.globalprotectioncluster.org/_assets/files/20180523-gp20-plan-of-action-final.pdf

³ UNHCR Global Trends, June 2019. <https://www.unhcr.org/globaltrends2018/>

The first global IDP estimate in 1982 put the number of IDPs at 1.2 million in 11 countries. By 1995, this had increased to an estimated 20 to 25 million IDPs in more than 40 countries, almost twice the estimated number of refugees. The last decade has seen a dramatic escalation in number of IDPs⁴.

Refugee influxes tend to be more visible though, especially when involving large numbers of people who put their lives at risk crossing frontiers without authorisation, and congregate in squalid makeshift settlements. The arrival of refugees into a state raises difficult questions with respect to sovereignty, state security and social cohesion, which often garners international attention. While the issues are important and pressing, the heightened concern for refugees has detracted the international community's attention from the vulnerability of IDPs, who in many ways are in greater need of human rights protection and humanitarian assistance.

In the course of their displacement, IDPs are exposed to violence and other human rights infringements, often without proper assistance from their governments. They have limited or no access to essential material assistance and are caught in desperate situations amidst ongoing fighting or in remote and inaccessible areas cut-off from relief or emergency assistance. In protracted displacement situations, IDPs are forced to live away from their homes for years or even decades, often lacking access to property, developmental needs such as education, employment, and sustainable livelihoods. Ultimately, they lose hope for the future⁵.

Where the state is unwilling or unable to carry out its responsibilities with respect internal displacements, it falls to the humanitarian community to respond. Unlike the situation for refugees though, there is no mandated UN agency to protect and assist IDPs. In a partial response to this gap, the UN and other agencies have adopted a "cluster approach", which has aided the coordination of efforts.

⁴ Forced Migration Review. Issue 59. October 2018 - includes a major feature marking the 20th anniversary of the Guiding Principles on Internal Displacement: <https://www.fmreview.org/>

⁵ IDMC Annual Report, 2018. The Internal Displacement Monitoring Center (IDMC) is the leading source of information and analysis on internal displacement. IDMC is part of the Norwegian Refugee Council, an independent, non-governmental humanitarian organisation: <https://www.internal-displacement.org/>

The legal and normative framework

Under international law, the primary responsibility for protecting the rights and wellbeing of and providing assistance to IDPs rests with the state in which the IDPs are located. The concept of state sovereignty and the presumption that a state can and will protect all citizens in all circumstances has meant that IDPs have been excluded from the system of international legal protection, despite being displaced often in the same way and for the same reasons as refugees.

Guiding Principles on Internal Displacement, 1998⁶

While consistent with international human rights and humanitarian law and analogous to refugee law, the Guiding Principles do not constitute a legally binding instrument and lack the clarity and robustness of an international treaty, like the 1951 Refugee Convention.

The Guiding Principles provide only guidance to states but identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. They address protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth the guarantees for safe return, resettlement and reintegration.

To mark the 20th anniversary of the Guiding Principles, the Global Protection Cluster, a network of humanitarian agencies and NGOs, launched a multi-stakeholder 3-year plan, the *Plan of Action for Advancing Prevention, Protection and Solutions for Internally Displaced People 2018–2020* (GP20). The GP20 campaign has prolonged the anniversary of the Guiding Principles until the end of 2020, with the aim of raising awareness of the Guiding Principles and finding durable solutions for IDP situations⁷.

Framework on Durable Solutions for Internally Displaced Persons⁸

The Guiding Principles recognise that ultimately the protection of IDPs means achieving a *durable solution* whereby IDPs are no longer in need of assistance and protection connected to their displacement. Principle 6 states that “displacement shall last no longer than required by the circumstances”. Drawing on existing international law, Principles 28-30 set out the right of IDPs

⁶ Guiding Principles on Internal Displacement, 1998: <http://www.ifrc.org/Docs/idrl/1266EN.pdf>

⁷ GP20 Campaign to Advancing Prevention, Protection and Solutions for Internally Displaced People <http://www.globalprotectioncluster.org/gp20/>

⁸ IASC Framework on Durable Solutions for Internally Displaced Persons: <https://interagencystandingcommittee.org/other/iasc-framework-durable-solutions-internally-displaced-persons>

to a durable solution and the role of states and humanitarian agencies in achieving this.

To bring clarity to the concept, in 2010 the Inter-Agency Standing Committee Meeting developed the *Framework on Durable Solutions for Internally Displaced Persons* to provide guidance on the processes and conditions that support and deliver a durable solution.

The African Union's Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2012 (the Kampala Convention)⁹

On 6 December 2012, the African Union's Kampala Convention entered into force, becoming the world's first regional treaty on internal displacement. The Convention imposes legal obligations on state parties to protect the rights and wellbeing of people forced to flee their homes due to conflict, violence, disasters and human rights abuses. Given the continent's diverse realities and challenges, each state has taken a different approach to domestication, but the Convention remains a shared framework.

As of October 2019, of the AU's 55 member states, 40 had signed the Convention and 29 had ratified it.

The change required

International law protecting IDPs needs to be strengthened. And the Kampala Convention provides a good example for the international community.

IDPs should enjoy in equal measure, the same rights and freedoms under international and domestic law as their fellow citizens. They must not be discriminated against or prevented from gaining access to basic human rights and freedoms on the grounds of their displacement.

Particular attention should be given to protect IDPs against murder, genocide, summary or arbitrary executions and forced disappearances. Provisions must be made to meet the needs of vulnerable groups as well as protecting them against various forms of exploitation. Humanitarian workers must have their access to populations facilitated.

⁹ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention): <https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>

Recommendations

To governments and authorities of the hosting communities:

- Recognise the state's primary duty and responsibility to provide protection and humanitarian assistance to IDPs within its jurisdiction.
- Recognise that IDPs have the right to request and receive protection and humanitarian assistance from their governments and must not be persecuted or punished for making such a request.
- Enact laws and put in place other normative frameworks that protect IDPs.
- Embrace multiple approaches to promoting the rights of and providing humanitarian assistance to IDPs, helping in recovery, rehabilitation and development efforts, as well as peacebuilding.
- In dialogue with IDP communities and their leaders, ensure the right of IDPs to a durable solution.¹⁰
- Ensure security in IDP camps, particularly with regard to the protection of women, children, the elderly and the disabled.
- Recognise that sufficient food and potable water, basic shelter and housing, essential medical services and sanitation, appropriate clothing, and education that respects the IDP's cultural identity and religion, are vital to preserving the dignity of IDPs.
- Guarantee IDPs the right to seek safety in another part of the country, the right to 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 or health would be at risk.
- Establish conditions, as well as provide the means for, allowing IDPs to return voluntarily, in safety and with dignity, or to resettle voluntarily in another part of the country.
- Facilitate the reintegration of returned or resettled IDPs, ensuring their full participation in the planning and management of their return or resettlement and reintegration.
- Grant and facilitate the free and safe passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the IDPs.

¹⁰ See footnote 7, IASC Framework.

To African Member States:

- To promote the protection of displaced persons in Africa, especially vulnerable populations, sign, ratify and implement the Kampala Convention without delay.
- Fully integrate the monitoring and review of displaced women's housing, land and property rights into programmes, and eliminate discriminatory and harmful practices, as defined in the Convention, that displace women and prevent their return.

To humanitarian actors:

- Ensure humanitarian assistance to IDPs is not diverted, particularly for political or military reasons.
- To those engaged in international peace work, collaborate in holding states accountable for protecting and assisting IDPs.
- Improve the Cluster Leadership Approach, a joint effort by humanitarian agencies to reach more IDPs in need of assistance and protection, in a reliable and timely way.
- Strengthen inter-agency coordination when protecting and assisting IDPs.
- Strengthen links amongst the clusters.

To the UNHCR:

- Monitor closely states' development of national laws on internal displacement and compliance with such laws.
- Continue to develop the mandate relating to IDP issues.
- Strengthen expertise and staffing levels at headquarters and at the country level.
- Continue close cooperation with the incoming Special Rapporteur on the Human Rights of IDPs.
- Encourage efforts to develop legal instruments to bolster the framework of protection for IDPs and promote their entry into force.