



European
University
Institute

SCHOOL OF
TRANSNATIONAL
GOVERNANCE

POLICY BRIEF

Issue 2020/02
May 2020

BUILDING ON THE 20TH ANNIVERSARY OF THE GUIDING PRINCIPLES RECOMMENDATIONS FOR FUTURE ACTION ON INTERNAL DISPLACEMENT

The 20th anniversary of the Guiding Principles on Internal Displacement (“GP20”) in 2018 offered a welcome opportunity to draw renewed attention to the issue of internal displacement globally, both for researchers and policy practitioners. Building on the initiatives associated with this anniversary, the High Level Policy Dialogue (HLPD) on International Displacement at the European University Institute aimed to support efforts to address and prevent internal displacement, by analysing the level of implementation of the Guiding Principles on Internal Displacement (GP), and by identifying the best practices that could form the basis for future action. Thanks to the active and insightful contribution of all participants, the HLPD facilitated a rich and thoughtful exchange of ideas, and developed a number of policy recommendations on internal displacement, a complex issue which remains as acute as ever, as illustrated by the recent establishment of the United Nations Secretary-General’s High-Level Panel on Internal displacement in 2020.

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The opinions of the authors represent personal opinions and do not represent the position or opinion of the European University Institute.

BACKGROUND

In 2019, 33.4 million newly displaced persons were recorded, as a result of conflict and disasters, across 145 countries and territories¹. While disasters still constituted the major cause of displacement in 2019 (almost 75% of the total number), new displacement also featured in a set of new and protracted conflict situations – most notably Syria (1.85 million), the Democratic Republic of Congo (1.67 million), and Ethiopia (1.05 million). The number of newly displaced persons added to several long-standing cases of conflict-induced displacement, such as in Syria and Colombia, with respectively 6.5 and 5.6 million IDPs. As a result, at the end of 2019, a total of 45.7 million persons were estimated to be internally displaced because of conflict and violence.²

New displacements and the cumulative number of displaced persons are in practice very diffi-

cult to estimate, both concretely and due to the political sensitivities associated with acknowledging displacement. In addition, other types of displacement are not systematically registered. For example, the number of persons displaced by development projects, or by criminal violence, land seizures, or slow-onset disasters remains uncertain.

Nevertheless, given the considerable challenges and gaps related to information gathering and analysis, the simple fact that displacement data are available illustrates an increased awareness of internal displacement. At the same time, despite efforts at both national and international levels to address large-scale displacement, the marked rise in the number of new displacements and in the cumulative number of IDPs clearly calls for a more effective response.

KEY INTERNATIONAL EVENTS AND INITIATIVES RELATED TO INTERNAL DISPLACEMENT (SELECTIVE)

- 1992** UN Secretary-General Boutros Boutros-Ghali appoints Francis M. Deng as the first Representative of the Secretary-General on internally displaced persons (E/CN.4/RES/1992/73).³
- 1995** Francis M. Deng submits to the UN Commission on Human Rights the “Compilation and Analysis of Legal Norms” (E/CN.4/1996/52/Add.2).⁴
- 1998** Presentation of the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2)⁵ to the UN Commission on Human Rights, that “takes note of the report” (E/CN.4/RES/1998/50).⁶

¹ GRID 2020 (<https://www.internal-displacement.org/global-report/grid2020/>)

² For example, between 2016 and 2017, the number of newly displaced persons as a result of conflict and violence almost doubled (from 6.9 million to 11.8 million).

³ Available from: https://www.ohchr.org/Documents/Issues/IDPersons/E%20CN.4_RES_1992_73.pdf

⁴ Available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G95/146/89/PDF/G9514689.pdf>

⁵ Available from: <https://undocs.org/E/CN.4/1998/53/Add.2>

⁶ Available from: https://ap.ohchr.org/documents/dpage_e.aspx?si=E/cn.4/res/1998/50

⁷ Available from: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf

- 2005** In the “2005 World Summit Outcome” (A/RES/60/01),⁷ the UN General Assembly recognises “the Guiding Principles on Internal Displacement as an important international framework”.
- 2015** The UN General Assembly adopts the resolution “Transforming our world: the 2030 Agenda for Sustainable Development” (A/RES/70/1).⁸
- 2018** Driven by the mandate of the UN Special Rapporteur on the human rights of internally displaced persons, UNHCR and OCHA, the multi-stakeholder “20th Anniversary of the Guiding Principles on Internal Displacement: A Plan of Action⁹ for Advancing Prevention, Protection and Solutions for Internally Displaced People 2018-2020” is launched.
- As part of the follow up of the 2016 New York Declaration for Refugees and Migrants (A/RES/71/1)¹⁰, the UN High Commissioner for Refugees, Filippo Grandi, proposes a Global Compact on Refugees in his annual report to the General Assembly in 2018 (A/73/12 (Part II))¹¹, which was affirmed by the UN General Assembly (A/RES/73/151),¹² after two years of consultations.
- 2019** The UN Secretary-General, António Guterres, establishes¹³ a High-Level Panel on Internal Displacement.
- 2020** The UN Secretary-General, António Guterres opened the inaugural meeting¹⁴ of the newly established High-Level Panel on Internal Displacement in Geneva on the 25th of February.

⁸ Available from: <https://undocs.org/A/RES/70/1>

⁹ Available from: https://www.globalprotectioncluster.org/_assets/files/20180523-gp20-plan-of-action-final.pdf

¹⁰ Available from: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1

¹¹ Available from: <https://www.unhcr.org/excom/unhcrannual/5ba3a5d44/report-united-nations-high-commissioner-refugees-part-ii-global-compact.html>

¹² Available from: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/151

¹³ Available from: <https://www.un.org/press/en/2019/sgsm19825.doc.htm>

¹⁴ Available from: [https://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/055A5492969A3C-79C12585190031C5AC?OpenDocument=](https://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/055A5492969A3C-79C12585190031C5AC?OpenDocument=)

THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

Some important lessons can be learned from the Guiding Principles on Internal Displacement,¹⁵ as an example of what can be done to foster international standards on sensitive issues related to human rights.

1. Soft law is less constraining and hence, more easily accepted

The adoption and diffusion of the GP were facilitated by the combination of a favourable international political context at the time of their creation, and their particular ‘soft law’ form. The latter had two distinct effects.

First, it enabled a process of adoption in 1998 that was more efficient - given that the GP are less politically sensitive (and hence, time-consuming) than binding norms. And second, it created a space for on-going and constructive dialogue, rather than focusing on ways to sanction failures of compliance. It should also be noted that the active and central involvement of States in the process of adoption is crucial for the acceptance of soft law.

2. Principles are more likely to be implemented if they speak to specific needs and are backed by strong advocacy

The diffusion of the GP was made possible because (1) they represent a flexible instrument that can (and should) be adapted to specific contexts, (2) they respond to existing needs for guidance (notably from States) and (3) they were supported by strong advocates, starting with the Representative of the Secretary-General on internally displaced persons.¹⁶

3. Principles are more likely to be implemented if they are connected to pre-existing commitments, norms and legal obligations

While the GP represent soft law, they are based on binding international instruments which can be accessed and referenced in efforts at implementation. Moreover, the connection to pre-existing commitments and legal obligations ensures that the GP are portrayed not as ‘revolutionary’, but rather as part of a broader agenda that already enjoys a degree of consensus.

¹⁵ Available from: <https://undocs.org/E/CN.4/1998/53/Add.2>

¹⁶ Renamed in 2004 the Representative of the Secretary-General on the human rights of internally displaced persons, and replaced in 2010 by the mandate of the Special Rapporteur on the human rights of internally displaced persons.

POLICY RECOMMENDATIONS

1. Promote the use of judicial mechanisms to enforce IDPs' rights

Better enforcement of IDPs' rights could be guaranteed through a variety of international justice mechanisms, such as the International Criminal Court (see for example the cases of Afghanistan and Myanmar/Bangladesh at the ICC),¹⁷ human rights treaty bodies (TBs)¹⁸ and universal jurisdiction.

There are also important standards regarding internal displacement at the regional level, which could be enforced through regional courts in order to uphold the rights of IDPs. Examples include regional binding instruments addressing specifically the IDPs like the Great Lakes Protocol on Internally Displaced Persons¹⁹ and the Kampala Convention²⁰ in Africa, or not, such as the American Convention on Human Rights in America.²¹

Last but not least, as the case of Kenya illustrates, the adoption of laws on internal displacement at the national level can contribute to the enforcement of IDPs standards, by providing the tools that national courts can use to guarantee respect for the rights of displaced person. National courts can also contribute to raising awareness about the challenges facing IDPs in a country (as in El Salvador), or extend existing legislative frameworks in line with the GP (as in Georgia).²²

2. Develop more systematic monitoring of IDPs' rights

Because judicial decisions may not always be respected, or because justice institutions may be too weak to issue definitive judgments, alterna-

tive paths for promoting and guaranteeing IDPs' rights must be explored.

One immediate priority is to promote a more systematic monitoring and follow up of internal displacement situations. This can be done directly at the international level, by the UN Special Rapporteur on the human rights of internally displaced persons.

At the national level, different institutions can play this role of monitoring and follow-up, such as national human rights institutions, parliaments or civil society actors. In Colombia, for example, the 2004 judgment of the Constitutional Court (Decision T-025) led, inter alia, to the creation of indicators to monitor the implementation of the IDP law with the support of civil society actors.

The broader international community can also play a substantial role in supporting different national actors, financially, technically or by providing them with a greater access to wider international audiences.

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Furthermore, there are indirect mechanisms that could be leveraged to support the monitoring of displacement situations and the fulfilment of IDPs' rights, such as peer reviews mechanisms²³ or the Universal Periodic Review of the Human

¹⁷ For more information, please refer to the following webpages: <https://www.icc-cpi.int/afghanistan> and <https://www.icc-cpi.int/rohingya-myanmar>. Last accessed in April 2019.

¹⁸ For more information, please refer to: <https://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>. Last accessed in April 2019

¹⁹ Available from: <https://www.refworld.org/pdfid/52384fe44.pdf>

²⁰ Available from: https://au.int/sites/default/files/treaties/7796-treaty-0039_-_kampala_convention_african_union_convention_for_the_protection_and_assistance_of_internally_displaced_persons_in_africa_e.pdf

²¹ Available from: https://www.cidh.oas.org/basicos/english/basic3.american_convention.htm

²² For more information regarding IDP laws, please refer to: <http://www.globalprotectioncluster.org/global-database-on-idp-laws-and-policies/>,

Rights Council.²⁴ These mechanisms have the advantage of being flexible, universal, and hence more inclusive, but are rarely used in a systematic manner or supported by timely follow-up.

Those states, international organisations, and civil society actors that committed to addressing the challenges posed by displacement should investigate concrete ways to incentivise the use of these mechanisms.

3. Foster policy dialogue and commitment on internal displacement

Justice mechanisms face a challenging context both nationally and internationally, given trends toward greater polarization and political sensitivity regarding what may be perceived as illegitimate ‘foreign’ interference. This is why it is critical to foster continuous policy dialogue as an alternative way to address internal displacement.

Such dialogue should seek, first and foremost, to engage state representatives in a timely and sensitive manner, by acknowledging the specific features of the domestic political context, but also strive to include a wider set of actors in dialogue in order to guarantee long term commitment. Discussions with state-level officials should aim to identify and understand the concrete needs, concerns and interests that states have regarding their displacement issues.

To that end, different strategies can be adopted, including offers to support research on the different types of displacement, on the direct and indirect costs of displacement for that state, and on the broader effects of displacement on political and institutional stability – both nationally and regionally.

The international community can also pursue more constructive dialogue by providing technical assistance to support the collection of data,²⁵ the analysis of national normative and institutional framework regarding internal displacement,²⁶ as well as the design of national policies and laws on IDPs, or through financial support (direct or indirect).

Finally, other frameworks related to internal displacement, such as the one provided by the 2030 Agenda for Sustainable Development,²⁷ can be referenced and activated to foster political dialogue.

4. Establish clear short and long-term goals for addressing internal displacement

While political commitment is a critical first step in addressing displacement situations, the articulation of concrete goals is another necessary condition for the effective guarantee of IDPs’ rights. These goals need to be defined and specified according to the particular context in which they are to be achieved, in a pragmatic manner, and in line with the ‘do no harm’ principle.

It is also important to identify both short term and long term goals, as internal displacement cannot and should not be considered exclusively as a crisis phenomenon. The inclusion of internal displacement in national development plans could thus be one way of fostering longer term engagement with the issue.

To identify goals, policy actors should conduct further research on the causes of internal displacement – so as to inform preventive strategies – as well as on the long term effects of internal displacement – so as to shape forms of response.

²³ See for example, the ones presented by the OECD; URL: <https://www.oecd.org/site/peerreview/peerreviewataglance.htm>. Last accessed in April 2019.

²⁴ For more information, please refer to: <https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>. Last accessed in April 2019.

²⁵ See for example the Displacement Tracking Matrix (DTM) by International Organization for Migration (IOM); URL: <https://www.globaldtm.info>

²⁶ See for example: NRC-IDMC.2015. A review of the normative framework in Kenya relating to the protection of IDPs (available from: <http://www.internal-displacement.org/sites/default/files/publications/documents/20150827-af-kenya-review-of-normative-framework-relating-to-protection-of-idps-en.pdf>) or UNHCR/NRC-IDMC. 2017. Examen du cadre normative et institutionnel malien relative à la protection des personnes déplacées à l'intérieur du Mali (available from: http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Mali/files/mali-normative-framework-fr.pdf)

²⁷ Available from: <https://undocs.org/A/RES/70/1>

Case study research should also be promoted in order to better understand how policy at the regional and international levels can support, rather than undermine, more local and bottom-up efforts to secure IDPs rights.

The process of defining policy priorities, and mechanisms for their implementation, should be as inclusive as possible, counting on the participation of both national and local authorities, as well as civil society, the private sector, and of course, the IDPs themselves

The process of defining policy priorities, and mechanisms for their implementation, should be as inclusive as possible, counting on the participation of both national and local authorities, as well as civil society, the private sector, and of course, the IDPs themselves. For their part, international actors should consider diversifying the types of funding they dedicate to internal displacement, as well as the type of expertise they bring to the table – most notably by including more develop-

ment actors. By taking this broader perspective, internal displacement could represent an opportunity to further the resilience agenda.

5. Improve the coordination of IDP policy by identifying and supporting a 'lead' actors

At national level, the role of the United Nations Resident Coordinator could be strengthened in order to guarantee coordination between national governments and the agenda and activities related to IDPs within the UN system. This involves not only better and more specific training for RCs, but also political support from headquarters and more formal mechanisms for information sharing and joint policy development between national and UN actors.

At international level, coordination on internal displacement could be reinforced by strengthening the role of the Special Rapporteur on the human rights of internally displaced persons, for example via the third Committee of the UN General Assembly.

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Co-funded by the
Erasmus+ Programme
of the European Union



The European Commission supports the EUI through the European Union budget. This publication reflects the views only of the author(s), and the Commission cannot be held responsible for any use which may be made of the information contained therein.



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doi:10.2870/164110
ISBN:978-92-9084-839-4
ISSN:2599-5928
QM-AY-20-002-EN-N

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