

National Instruments on Internal Displacement

A Guide to their Development

National Instruments on Internal Displacement

A Guide to their Development

August 2013

Cover photo: Dialogue with newly displaced pastoralists from Baragoi, Kenya 2012. (Photo: Nina Schrepfer, November 2012)

Internal Displacement Monitoring Centre
Norwegian Refugee Council
Chemin de Balexert 7–9, CH–1219 Châteleine (Geneva)
Tel.: +41 22 799 0700 Fax: +41 22 799 0701
www.internal-displacement.org

Brookings-LSE Project on Internal Displacement
The Brookings Institution, 1775 Massachusetts Ave. NW
Washington, DC 20036
www.brookings.edu/idp

Foreword and acknowledgements

Internal displacement shatters lives, threatens the wellbeing and functioning of communities, and often affects countries as a whole. Rebuilding lives and communities usually takes years. Governments bear the primary responsibility for their internally displaced citizens, but without national laws and policies on the issue they are challenged to fulfil their role. Ordinary legislation often fails to address the specific needs and vulnerabilities of internally displaced people (IDPs), to allocate clear responsibilities to competent authorities at the national and local level, or to provide a sound basis for making adequate resources available. The United Nations mandate-holders on internal displacement have a longstanding commitment to support the development of national laws and policies, and to this end it is a pleasure for us to introduce this new and very pertinent tool.

This guide builds on the expertise of various policymakers and is the culmination of a multi-year research project and consultation process that spanned our respective tenures as mandate-holders. It complements *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, published by the Brookings Institution in October 2008. The Brookings manual provides guidance to national authorities on the content of domestic legislation and policies on internal displacement, but this guide focuses on the process of developing such instruments. In keeping with the UN Guiding Principles on Internal Displacement, this guide emphasises the importance of consultative approaches and particularly IDPs' active participation in such processes.

The guide was drafted by Nina Schrepfer in cooperation with Barbara McCallin and Christophe Beau of the Internal Displacement Monitoring Centre (IDMC), and was revised in light of an extensive piloting and consultation process. It was edited by staff at the Brookings-LSE Project on Internal Displacement and IDMC. Appreciation goes to the Norwegian Refugee Council (NRC) and IDMC for funding and piloting the project, and we would also like to express our thanks to the many other individuals and organisations who contributed to the process.

Chaloka Beyani

UN Special Rapporteur on the Human Rights of Internally Displaced Persons

Walter Kälin

Former Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons

Table of contents

Introduction.....	7
Using the guide.....	8
Part I: Why develop a national instrument on internal displacement?	9
Part II: How can a national instrument on internal displacement be developed?	
What are the legal underpinnings of a national instrument?	11
Developing a national instrument: the consultative process	22
Overview: the seven stages of consultative processes	23
1. Initiating the process of developing a national instrument on internal displacement.....	24
2. Preparing to develop a national instrument	25
3. Organising the process of developing a national instrument....	43
4. Drafting and consulting on the national instrument.....	52
5. Validating the draft national instrument.....	55
6. Adopting the national instrument.....	57
7. Implementing and monitoring the new national instrument	58
Part III: The content of national instruments on internal displacement	62

Introduction

Internal displacement is a global phenomenon that poses major challenges for affected countries and regions. Its causes include natural and human-made disasters, human rights violations, generalised violence and armed conflict. Development and conservation projects can also displace large numbers of people.

The consequences of internal displacement can be severe, costly and long-lasting. In practical terms, it means the loss of homes, land, belongings and livelihoods, and the disruption of family and community life, creating special needs and vulnerabilities. Internally displaced populations can also strain the capacities of the communities in which they live. Internal displacement crises can impede the achievement of development goals, and may destabilise affected regions, particularly in conflict or post-conflict settings.

As citizens or habitual residents of the country in which they are displaced, internally displaced people (IDPs) will often turn for help to national authorities, which bear the primary responsibility for protecting and assisting them. The fulfilment of this responsibility is a challenge, however, particularly in the context of limited institutional capacities and funding. In order to meet the challenge effectively, a number of countries have adopted national laws, policies or strategies on internal displacement. Such instruments can provide important guidance to national authorities and other relevant parties involved in responding. They are also important tools for safeguarding IDPs' rights, as set out in the 1998 UN Guiding Principles on Internal Displacement (Guiding Principles).

Objectives

This guide aims to help law and policymakers address internal displacement in a planned and concerted manner through the development of national instruments, which can improve responses to IDPs' needs and rights at both the national and local level. In particular this guide:

- Provides advice to national authorities and other actors on processes for developing national instruments.

- Addresses both international and regional legal frameworks, and some of the difficulties typically encountered in incorporating such standards into national legislation and policies. Particular reference is made to the 2006 Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons (Great Lakes Protocol) and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).
- Complements *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers*, published by the Brookings Institution in October 2008, which explains the substance of rights-based national instruments on internal displacement in detail. While the Brookings manual focuses on content, this guide focuses on the process of developing them. Their combined use may help governments to exercise their responsibilities towards IDPs through well-crafted national instruments.

Using the guide

The guide is geared towards those involved in preparing and drafting laws and policies on internal displacement.

The development of national instruments on internal displacement is a sovereign task of governments. The guide, therefore, aims primarily to assist policymakers in governments and relevant ministries, and members of parliament. That said, national civil society groups and human rights institutions and international organisations and agencies may also provide invaluable support in the process, and they too may find it helpful.

The guide is divided into three parts:

Part I: WHY develop a national instrument on internal displacement?

Part II: HOW can a national instrument on internal displacement be developed?

Part III: WHAT should a national instrument on internal displacement address?

Part I

Why develop a national instrument on internal displacement?

“Before 1997, the state responded to forced displacement in an ad hoc and ineffective manner. A specific national policy to address the problem did not exist. Aid of any sort was provided to IDPs within the general social welfare and emergency response systems. Overall, the problem was given an extremely low priority and accorded little visibility within the Colombian public sphere. The adoption by Congress of Law 387 [on internal displacement] of 1997 represented a major breakthrough (...). It is undeniable that the very adoption of Law 387 of 1997 represented a substantial achievement.”

Manuel José Cepeda Espinosa,
The Constitutional Protection of IDPs in Colombia, 2009

Suggested action:

Identify why a national instrument on internal displacement is necessary

National laws, strategies and policies are important given that:

- **National sovereignty means that the primary responsibility for addressing internal displacement lies with the government.** The development of a national instrument is essentially an exercise of sovereignty, and as such is a core responsibility of governments facing internal displacement.
- **IDPs need and have a right to effective protection and assistance.** IDPs are either citizens or habitual residents of the country in which they are displaced, and are protected by the constitution and relevant national legislation. They also, however, have specific protection and assistance needs and vulnerabilities that domestic legislation does not usually address fully, as it is not tailored to the particularities and challenges of internal displacement. Nor is it drafted with times of humanitarian crisis involving displacement in mind.

- **The state has international, and in some cases regional, obligations to protect and assist IDPs.** In addition to constitutional and national legislation, IDPs are protected by international human rights law and in times of armed conflict by international humanitarian law (IHL). The extent of a state's obligations depends on the international conventions to which it is party. States are also bound by rules of customary international law, and may have obligations under regional agreements. Several regional bodies, including the Organisation of American States (OAS) and the Council of Europe (CoE), urge their member states to develop national policies on internal displacement. In Africa, the 2006 Great Lakes Protocol and the 2009 Kampala Convention make it mandatory for member states to develop national legal frameworks.
- **National instruments can boost the reliability and credibility of government responses to IDPs, and facilitate domestic and international cooperation on internal displacement.** If properly implemented, a coherent national instrument that clearly allocates responsibilities within the government can build trust and confidence in its actions. Countries experiencing internal displacement may require and benefit from the support of international bodies including humanitarian and development organisations and donors. A national instrument on internal displacement can also serve as a foundation for effective cooperation and coordination between the relevant parties.
- **National instruments can facilitate tailored responses to particular displacement situations.** Internal displacement creates certain challenges regardless of where it occurs, but each situation is different and also requires context-specific responses. A national instrument that is based on or fully incorporates the Guiding Principles and is tailored to a country's displacement situation can improve efforts to protect and assist IDPs.
- **Through the development of national instruments, government responses to internal displacement can be made more efficient and effective.** A national instrument provides a solid basis for planning and prioritising a state's activities in support of IDPs, which in turn facilitates the appropriate allocation of resources. It can help a state respond quickly and prevent the displacement situation from deteriorating further.

Part II

How can a national instrument on internal displacement be developed?

What are the legal underpinnings of a national instrument?

Suggested actions:

1. Deepen understanding of the applicable legal frameworks
2. Use applicable legal frameworks when drafting a national instrument

The three levels of the law on internal displacement

A host of national, regional and international legal provisions are relevant to internal displacement situations. It is, therefore, important to identify the applicable legal frameworks prior to drafting a national instrument.

1. National level

In principle, constitutions and national legislation remain applicable in situations of internal displacement, and IDPs are entitled to protection under these laws. They rarely reflect the specific needs of the displaced, however, and may even have detrimental effects. National legislation on documentation may, for example, require people to apply for their identity documents in their places of origin. Given the fact that returning to their homes or places of habitual residence to do so may put IDPs' safety at stake, such a requirement could prove an insurmountable obstacle.

As such, a legal review of national legislation may be necessary when developing a national instrument on internal displacement. It may help to remove legal obstacles for IDPs and to identify gaps and legislation in need of amendment.

National legal provisions are often backed up or complemented by regional and international law, and a state's legal traditions determine how these are applied in the domestic context. Under the monist tradition, regional and international law form an integral part of the domestic legal order. Under the dualist tradition, a law or other act of parliament may be necessary to incorporate regional and international obligations into the existing statute.

The following sub-sections explain how regional and international law are relevant to countries facing internal displacement.

2. Regional level

Regional and sub-regional organisations such as the African Union (AU), Organisation of American States (OAS) or the Council of Europe (CoE) encourage their member states to develop national laws and policies on internal displacement in their resolutions and recommendations and in the course of summits and workshops.

The table below lists some of the regional and sub-regional human rights conventions that may need to be taken into account when developing a national instrument on internal displacement.

Region	General human rights treaties (selected)	Specific human rights treaties (selected)
Africa	<ul style="list-style-type: none"> ■ African Charter on Human and Peoples' Rights 	<ul style="list-style-type: none"> ■ African Union Convention for the Protection and Assistance of Internally Displaced Persons ■ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ■ African Charter on the Rights and Welfare of the Child ■ Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons ■ Great Lakes Protocol on Property Rights of Returning Persons

Region	General human rights treaties (selected)	Specific human rights treaties (selected)
Americas	<ul style="list-style-type: none"> ■ American Convention on Human Rights ■ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights 	<ul style="list-style-type: none"> ■ Inter-American Convention on the Forced Disappearance of Persons ■ Inter-American Convention to Prevent and Punish Torture ■ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ■ Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities
Asia	<ul style="list-style-type: none"> ■ South-Asian Association for Regional Cooperation (SAARC) Social Charter 	<ul style="list-style-type: none"> ■ SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia
Europe	<ul style="list-style-type: none"> ■ European Convention on Human Rights with several Protocols ■ European Social Charter 	<ul style="list-style-type: none"> ■ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ■ European Framework Convention for the Protection of National Minorities ■ European Convention on Protection of Children against Sexual Exploitation and Sexual Abuse
Middle East	<ul style="list-style-type: none"> ■ Arab Charter on Human Rights 	

In Africa, two conventions are particularly relevant to the development of national instruments on internal displacement: the 2006 Great Lakes Protocol and the 2009 Kampala Convention. Both oblige state parties to develop national legislation, policies and/or strategies on internal displacement in order to incorporate IDPs' rights and implement obligations towards them.

Great Lakes Protocol

The 2006 Pact on Security, Stability and Development in the Great Lakes Region (Great Lakes Pact), together with its ten protocols and plans of action, seek to create lasting conditions for security, stability, sustainable development and reconstruction in the region. The Protocol on the Protection and Assistance to Internally

Displaced Persons has among its objectives the establishment of a legal framework in the region that ensures the adoption and implementation of the Guiding Principles, with a view to strengthening the legal protection of IDPs' physical safety and material needs. The Protocol on Property Rights of Returning Persons is also a key reference point as it addresses issues related to land and property in the context of durable solutions for IDPs. The Great Lakes Pact is legally binding upon the member states of the International Conference on the Great Lakes Region. They are obliged to develop national instruments on internal displacement in line with the pact and its protocols and to domesticate the Guiding Principles.

Kampala Convention

The 2009 Kampala Convention has among its objectives the establishment of a legal framework for preventing internal displacement, and for the protection and assistance of IDPs. It also aims to promote solidarity, cooperation and durable solutions, and to address the responsibilities and obligations of state parties and other actors. It entered into force on 6 December 2012. State parties are legally bound to incorporate their obligations under the convention into domestic law and to adopt policies or strategies on internal displacement at both the national and local level. To this end, they should designate an authority to coordinate efforts to assist and protect IDPs and to ensure provision of the necessary funds. Eventually and where applicable, relevant principles of the convention should also be included in peace negotiations and agreements in order to find durable solutions for the displaced (Article 3(2) Kampala Convention).

3. International level

There is no international convention on internal displacement, but international human rights law and international humanitarian law shape the approach to internal displacement extensively and should guide any effort to develop a national instrument.

Key point of reference: the UN Guiding Principles on Internal Displacement

The Guiding Principles constitute the key document on the protection and assistance of IDPs worldwide. Published in 1998, they restate IDPs' rights as enshrined in international human rights and international humanitarian law.

- The Guiding Principles identify IDPs' rights at all stages of displacement. They define what an IDP is, and set out their rights to be protected and assisted before and during displacement and in their search for durable solutions. They give national authorities the primary responsibility for protecting IDPs' rights, and clarify key principles relating to humanitarian assistance by international and non-governmental bodies.
- The Guiding Principles are highly authoritative as they are based on, reflect and are consistent with existing international human rights and international humanitarian law.
- The Guiding Principles have been recognised as an important framework for the protection and assistance of IDPs. This recognition afforded by the 2005 World Summit of Heads of States and Governments was subsequently confirmed by the UN General Assembly.

As such, the Guiding Principles provide invaluable guidance and are an important reference point in the development of national laws and policies on internal displacement.

Human rights law

Internal displacement crises often occur in contexts in which IDPs' human rights are widely neglected, disregarded or violated. International human rights law provides an essential framework for response, including through the development of rights-based national instruments. Such instruments, and the incorporation of IDPs' needs and concerns into national human rights action plans, can help to improve responses to internal displacement.

? *Why does human rights law matter in displacement situations?*

Internal displacement involves many challenges to IDPs' human rights, including the loss of homes and livelihoods, the disruption of children's education, the separation of families, the break-up of social networks, the loss or destruction of personal documents and exposure to violence. Human rights law covers both civil and political rights, such as those to life, family unity and documentation; and economic, social and cultural rights, such as those to food and water, adequate housing, education and access to health services. The catalogue of human rights contains individual entitlements and lays out states' obligations to respect, protect and fulfil these rights. Human rights protection is relevant before during and after displacement, and human rights law is relevant to IDPs regardless of the cause of their displacement.

? *What are the sources of human rights law?*

At the national level, constitutions often include a bill of rights that reflects many of the human rights contained in regional and international human rights law. Human rights law is primarily codified in international or regional treaties (see above table on regional treaties), either in general human rights conventions, or in specific instruments to protect particular groups such as children or women, or a particular right such as freedom from torture. Key human rights such as the prohibition of torture are also part of international customary law and must be respected by all countries, including those not party to the relevant treaties.

This table provides an overview of the major international human rights treaties:

General human rights treaties	Specific human rights treaties
<ul style="list-style-type: none">■ International Covenant on Civil and Political Rights■ International Covenant on Economic, Social and Cultural Rights	<ul style="list-style-type: none">■ International Convention on the Elimination of All Forms of Racial Discrimination■ Convention against Torture and Other Cruel, Inhuman and Degrading Treatment■ Convention on the Elimination of All Forms of Discrimination against Women■ Convention on the Rights of the Child and Optional Protocol II■ Convention on the Protection of All Persons from Enforced Disappearances■ Convention on the Rights of Persons with Disabilities



When is human rights law applicable?

As a principle, human rights law is applicable to all internal displacement situations, whether they be caused by armed conflict, disasters, generalised violence or development projects. Some guarantees such as the prohibition of torture and slavery provide absolute protection, while others may be limited under specific conditions. Such limitations must be laid down in law and necessary to the achievement of a legitimate aim such as upholding public order or health or protecting the rights of others.

Limiting the right to freedom of movement

Article 12 of the International Covenant on Civil and Political Rights guarantees in its first paragraph that *“everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence”*.

Freedom of movement is not, however, an absolute human right. Paragraph three provides that it *“shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.”*

In exceptional circumstances, governments may temporarily derogate from or suspend certain human rights. This is only permitted in the context of a public emergency that poses a serious threat to the life of a nation, and only for the shortest possible time as determined by the exigencies of a given crisis. Such measures must not be applied in a discriminatory manner. They must be officially proclaimed, and they must be consistent with other legal obligations such as international humanitarian law.

Derogation clause of the International Covenant on Civil and Political Rights, Article 4

“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the pres-

ent Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

"No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision."

"Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation."

How can international human rights law be used when developing a national instrument on internal displacement?

The incorporation of international human rights law into national laws and policies on internal displacement helps to ensure that the measures taken to respond to IDPs' needs meet human rights standards. It provides a clear benchmark for state action, and can be used to identify and clarify the responsibilities of particular government entities. Importantly, human rights law prohibits discrimination not only on the basis of race, religion, national origin and gender, but also "other status", which encompasses the fact of being displaced. National instruments should explicitly prohibit and address discrimination against IDPs, that is any treatment that puts them at a disadvantage purely on the basis that they are internally displaced. Human right guarantees also help to identify what IDPs can rightfully demand, and the limitations of such demands. The right to adequate housing, for example, entails access to shelter that is adequate under the circumstances. This means that IDPs may have to accept very basic shelter conditions during the emergency phase, but are entitled to better housing if their displacement becomes protracted.

Internal displacement and disaster management

Natural disasters are a major cause of internal displacement. It is generally acknowledged that the scale of such displacement can be significantly reduced if measures are taken to reduce risks in areas prone to natural disasters. Care must also be taken that IDPs are not settled in such areas or exposed to secondary natural hazards, while solutions for IDPs from disaster-prone areas can only be considered sustainable if risks are mitigated against to avoid recurrent disasters and the repeated displacement they cause.

Many countries have disaster management laws and policies, but these rarely address the displacement such disasters involve. A national instrument on internal displacement should, therefore, include specific provisions related to the monitoring of areas prone to disasters, the informing of their inhabitants about potential protective measures in case of disaster, and the establishment of early warning systems. Kenya's Prevention, Assistance and Protection to Internally Displaced Persons and Affected Communities Act 2012 states in Article 5 (4): *"The Government shall establish a prevention mechanism charged with monitoring areas inhabited by persons at risk of displacement, periodical reporting on the situation in such designated areas and early warning issued to the Cabinet Secretary and the Chair of the Committee for further action to prevent internal displacement."*

International humanitarian law

International humanitarian law applies to situations of armed conflict and occupation, and seeks to limit their effects. It sets parameters for the methods and means of warfare, and protects individuals who do not participate, or are no longer participating, in hostilities.

Why does international humanitarian law matter for IDPs?

IDPs are part of the civilian population and should benefit fully from the protection provided by international humanitarian law in times of armed conflict and/or occupation. It is binding upon all parties to a conflict, both state and non-state. This is particularly important in situations of internal armed conflict in which people may be displaced within, or to, areas controlled by non-state armed groups. Such groups are obliged to uphold their obligations towards all civilian populations, including IDPs. Doing so does not, however, give such groups legal status.

? *What are the sources of international humanitarian law?*

The main sources of international humanitarian law are treaty law and custom. The most relevant treaties are the Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention), which was adopted in 1949 and is ratified by all states, and its two additional protocols adopted in 1977. The rules of customary international humanitarian law were examined in detail in a 2005 study by the International Committee of the Red Cross (ICRC), which reviews state practice (the basis of customary law) in order to identify how customary rules are evolving.

? *When is international humanitarian law applicable?*

International humanitarian law applies only in situations of armed conflict and/or occupation, and derogation is not permitted. In international armed conflicts (IACs), all four Geneva Conventions and the First Additional Protocol may be applicable, subject to ratification. In non-international armed conflicts (NIACs), IHL protection are more limited. They are provided by Article 3, which is common to the four Geneva Conventions, and the Second Additional Protocol. In both situations, the well-developed body of customary international humanitarian law applies.

Rules of customary international humanitarian law on internal displacement

Rule 129. A. Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand. [IAC]

B. Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand. [NIAC]

Rule 130. States may not deport or transfer parts of their own civilian population into a territory they occupy. [IAC]

Rule 131. In case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated. [IAC/NIAC]

Rule 132. Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist. [IAC/NIAC]

Rule 133. The property rights of displaced persons must be respected. [IAC/NIAC]

ICRC Study on Customary International Humanitarian Law, Vol. I, 2006



How can international humanitarian law be used when developing a national instrument on internal displacement?

Like human rights law (see above), international humanitarian law helps to identify IDPs' specific needs and states' corresponding obligations. It also sets the relevant international standards that a national instrument should conform to. Such standards include the prohibition of arbitrary internal displacement, the principle of non-discrimination, the right to life, family life, living standards, humanitarian assistance, documentation, property, employment, social protection and education, and the prohibition of forcible child recruitment. International humanitarian law also sets out the obligations of non-state armed groups towards IDPs in situations of internal armed conflict, and this may be an important element of a national instrument. The ICRC manual on the domestic implementation of international humanitarian law released in 2013 may provide helpful guidance to policymakers, and national committees for the implementation of IHL exist in more than 100 countries. These too may inform the process of developing a law or policy on internal displacement.

Internal displacement as an international crime

The 1998 Rome Statute of the International Criminal Court identifies three main international crimes of genocide, crimes against humanity and war crimes. It clarifies that internal displacement may amount to such an international crime.

Article 7 – Crimes against humanity: Deportation or forcible transfer of population may amount to a crime against humanity if committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack. Deportation or forcible transfer of population means the “*forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.*” (Article 7 (1) (d) and (2) (d)).

Article 8 – War crimes: War crimes include grave breaches of 1949 Geneva Conventions or other serious violations of laws and customs applicable in times of armed conflict. This includes the unlawful deportation or transfer of civilians (Art. 8 (2) (a) (vii) or “*ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand*” (Art. 8 (2) (e) (viii)).

Developing a national instrument: The consultative process

Suggested actions:

1. Approach the development of the national law or policy as a consultative process involving all relevant stakeholders, and deepen understanding of the principles underpinning such consultative processes
2. Consider the actions and guidance provided in the following seven-stage model, tailoring them as needed to ensure broad-based participation, to reach the envisaged outcome

Investing in a consultative process

The development of a national instrument on internal displacement is a process worth investing in for the following reasons:

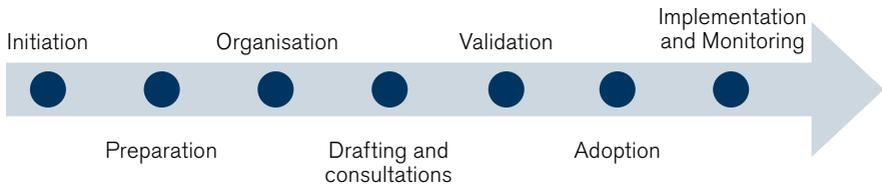
- It is an opportunity for the government to demonstrate its approach to fulfilling its primary role in addressing internal displacement and to further build its capacity.
- It brings together all relevant actors involved in addressing internal displacement in the affected country. It triggers relevant discussions among all participants in the process and provides advocacy opportunities.
- It helps to resolve misunderstandings and to reach agreement on key notions, definitions and concepts.
- It helps to identify a common way forward in addressing and solving displacement situations. It gives IDPs and other communities affected by displacement an active role and the chance to contribute, helping to counteract hopelessness and frustration.
- It is an excellent opportunity to involve donors.
- It is an important learning exercise for everyone involved.

The consultative process to develop a national instrument is as important as the outcome, because it will shape its content and prospects for its successful implementation.

Overview:

The seven stages of consultative processes

Consultative processes may be approached in a number of ways. Some countries may have previously established consultative systems that may be drawn upon to support the development of a national instrument on internal displacement, but these may need to be adapted to ensure that all stakeholders, including IDPs and other displacement-affected communities, have the opportunity to participate actively in the process. In general, it can be seen as a seven stage process, from initiation to implementation and monitoring.



The stages are described below, with suggested actions, practical guidance and good practice for reaching the desired outcome at each stage. It is important to note that they are not necessarily sequential. Depending on how the process is approached, some stages may overlap. Application of this model will also need to take context-specific concerns into account, from differing levels of popular mobilisation within IDP communities, to variations in security, access to information and communications systems.

STAGE | Initiating the process of developing a national ONE | instrument on internal displacement

Suggested actions:

1. Make the decision to develop a national instrument on internal displacement
2. Communicate the decision to relevant stakeholders

1. Making the decision to develop a national instrument on internal displacement

As the development of a national instrument is a sovereign act, initiating the process requires a decision by the competent national authorities, preferably at the highest level of government. Advocacy by other parties, including national civil society groups and international organisations, and recommendations by experts such as the UN Special Rapporteur on IDPs can often help prompt national authorities to make such a decision, and to demonstrate their willingness to support the process according to the relevant legal standards.

Obligations to develop a national instrument under the Great Lakes Protocol and the Kampala Convention

Great Lakes Protocol, Article 2

“The objectives of this Protocol are to:

- 1. Establish a legal framework in the Great Lakes Region for ensuring the adoption and implementation by Member States of the Guiding Principles on Internal Displacement; (...)*
- 3. Provide a legal basis for the domestication of the Guiding Principles into national legislation by Member States; (...)”*

Kampala Convention, Article 3 (2)

“States Parties shall:

- a. Incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law; (...)*
- c. Adopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels (...)”*

2. Communicating the decision to develop a national instrument on internal displacement

In order to begin the process with transparency, the decision to develop a national instrument should be broadly communicated to all relevant national, regional and international actors who may be able to support the national authorities in their endeavour. IDPs and other displacement-affected communities should also be informed about the decision and the ensuing process.

ONE

Stage one outcome: National authorities have taken the decision to develop a national instrument on internal displacement and have communicated that decision to key relevant stakeholders.

STAGE TWO | Preparing to develop a national instrument

The successful development of a national instrument on internal displacement takes time and careful preparation.

Suggested actions:

1. Improve understanding of key notions and concepts
2. Gather and assess relevant data
3. Decide whether a legal review of national legislation is necessary and at what stage in the process it should be undertaken
4. Define the scope of the envisaged instrument
5. Define the type of instrument required
6. Decide whether to request technical support from the international community

1. Improving understanding of key notions and concepts

The following is a brief introduction to the key notions and concepts involved in a national instrument on internal displacement.

* *Internally displaced person (IDP)*

According to the Guiding Principles, IDPs are “*persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects 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.*” This concept has been codified in the Great Lakes Protocol (Article 1 (4)) and the Kampala Convention (Article 1 (k)).

* *Displacement-affected communities*

Displacement-affected communities are those that bear the consequences of internal displacement. In addition to IDPs themselves, they include host communities, communities in return areas, and those into which IDPs chose to settle in and locally integrate.

* *The displacement process*

Internal displacement is not a static condition, but a process that starts with flight to an area within the country where IDPs find refuge. Many IDPs are displaced multiple times or live in protracted displacement for long periods before they are able to find a durable solution, and their needs and vulnerabilities change during the process. Responses need to be adapted accordingly. The length of displacement may vary from a few weeks or months to years or even decades. Protracted displacement occurs when significant obstacles hamper IDPs’ achievement of durable solutions. It creates specific needs that may become more serious over time as a result of weakened coping mechanisms. Some IDPs become caught up in cyclical displacement, which also hinders their achievement of durable solutions.

* *Durable solutions*

According to the *Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for Internally Displaced Persons*, a durable solution is achieved when IDPs “*no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement.*” Durable solutions can be achieved through:

- a. Sustainable reintegration into IDPs’ places of origin (return);
- b. Sustainable local integration in areas where IDPs have taken refuge (local integration);
- c. Sustainable integration in another part of the country (settlement elsewhere).

These settlement options apply to all IDPs, whether they have been displaced by conflict and human rights violations, or other factors such as natural disasters. As citizens or habitual residents of the country in which they are displaced, they have the right to freedom of movement and to choose their place of residence. Significantly, this gives IDPs the right to make informed and voluntary choices about the resolution of their displacement.



Response to displacement

“Response to internal displacement” is a broad term embracing all activities and measures undertaken in the course of the displacement process. This includes measures to (a) prevent, prepare for and mitigate the consequences of displacement; (b) provide assistance and protection to IDPs; and (c) find and support durable solutions. There is a rich set of international guidance on response. The *Handbook for the Protection of Internally Displaced Persons*, published in 2010, is a particularly important reference tool.

2. Gathering and assessing relevant data

Data on displacement situations is often insufficient and/or outdated. Reliable information on the causes, magnitude and dynamics of displacement, including IDPs' needs and vulnerabilities is, however, indispensable in framing a national instrument and facilitating its implementation.

National authorities have the primary responsibility for collecting and compiling relevant data on displacement in their country. National statistics offices can play a vital role in this sense, but as the processes for collecting data on IDPs and other displacement-affected communities usually require special expertise, resources and capacity, international support is common. Whether or not they are internationally supported, data collection processes require the cooperation of authorities at many different levels.



What data and information are needed?

Data and information are required on the overall displacement situation, including:

- The overall number of IDPs, disaggregated by age and sex;
- IDPs' location, the areas affected by displacement, noting those which may not be accessible;
- The cause(s) of displacement, including specific events and circumstances that triggered it;

- Patterns of displacement, including information on the context in which displacement occurs (rural or urban), flight routes, duration, repeated displacement, and the different groups affected among the displaced population;
- IDPs' living conditions (whether they live in camps, informal settlements, with host families or on their own, or in rural or urban environments) and their corresponding humanitarian and development needs;
- Protection concerns;
- Potential solutions for displaced groups and individuals, including IDPs' plans, preferences and needs in attaining them.

? How should the information be collected?

The collection of data on IDPs includes (a) regularly profiling the displacement situation in its entirety, (b) registering IDPs and (c) consulting with them and other displacement-affected populations. In many situations, a combination of these approaches may be required. Given the personal and sensitive nature of the information required, proper data management techniques are needed, including appropriate protocols to ensure consent and confidentiality in collecting and sharing it.

Profiling is understood as the “*collaborative process of identifying internally displaced groups or individuals through data collection, including counting, and analysis, in order to take action to advocate on their behalf, to protect and assist them and, eventually, to help bring about a solution to their displacement*” (Guidance on Profiling Internally Displaced Persons). It provides an overview of displacement-affected populations through data collection and analysis of core data (information on the number of IDPs and their location, disaggregated by age and sex) and other quantitative and qualitative data on issues including causes and patterns of displacement, protection concerns, humanitarian needs and prospects for durable solutions.

Profiling support

Guidance on Profiling Internally Displaced Persons is a practical tool that aims to assist national authorities and other parties in assessing displacement situations. An inter-agency initiative led by the Norwegian Refugee Council's Internal Displacement Monitoring Centre (NRC/IDMC) and the UN Office for the Coordination of Humanitarian Affairs (OCHA), it explains different profiling methodologies and provides guidance on the choice of the most appropriate

approach. It is available in English and French at www.internal-displacement.org. *The Joint IDP Profiling Service (JIPS)* is a Geneva-based inter-agency service set up in 2009 and supervised by a steering committee made up of the Danish Refugee Council (DRC), NRC/IDMC, the International Organisation for Migration, the Office of the Special Rapporteur on the Human Rights of IDPs, the UN Refugee Agency (UNHCR), OCHA and the UN Population Fund (UNFPA). In affected countries that ask for its support, JIPS aims to promote collaborative responses and solutions for IDPs by providing governments, and humanitarian and development organisations, with accurate information about displacement situations. These insights are gleaned from data collected and disaggregated by sex, age, location and diversity. National authorities can approach the country offices of the steering committee members to request such support. JIPS can help to determine their profiling needs, recommend the most appropriate profiling method and provide assistance in setting up a profiling exercise and analysing its findings. It also provides training on all aspects of IDP profiling. See <http://www.jips.org>.

Registration entails the identification of displaced individuals, families and households, and the collection of other personal data on them, such as their name, date of birth, sex, family relationships, area of origin, location and special needs.

Whether or not to undertake registration can be a difficult decision. On the one hand, it may be necessary or useful when it serves a specific purpose, for example identifying those entitled to receive or access a specific benefit such as food relief. It may also improve responses more generally by (a) establishing the number, location and key demographic characteristics of the displaced population, (b) preventing those not entitled to humanitarian assistance and services from accessing it fraudulently and (c) facilitating the issuing of temporary replacements for personal documentation lost during flight.

On the other hand, registration may not be appropriate, particularly if sensitive data cannot be properly managed and protected, the displacement situation is volatile, IDPs have fled to inaccessible areas or the necessary resources and capacities are not available to manage and complete the process. Registration also carries risks, such as the misuse of personal data; the exclusion of some IDPs, not only

from registration but also from assistance if these are linked; the creation of unrealistic expectations in terms of assistance or protection; reliance on outdated data if databases are not properly maintained; and reprisals because registration may associate IDPs with particular parties to a conflict.

National authorities that decide to undertake registration should ensure that:

- Procedures are transparent, non-discriminatory, known and accessible to all IDPs and swift so that access to particular benefits linked to registration is not delayed;
- Criteria for registration are clear, non-discriminatory and do not exclude individuals or groups of IDPs in line with the Guiding Principles;
- Procedures include all IDPs, including those in remote or inaccessible areas and those who are less visible, for example because they are not living in camps;
- The process does not create protection risks for the displaced population;
- Those without documentation are not excluded from registration, but rather are provided with the documents needed to register;
- Any information collected is protected and its confidentiality ensured in order not to expose IDPs to further risks.

What do the Kampala Convention and Great Lakes Protocol suggest?

In Article 13 (1), the Kampala Convention requests its signatories to “*create and maintain an up-dated register of all internally displaced persons within their jurisdiction or effective control. In doing so, States Parties may collaborate with international organisations or humanitarian agencies or civil society organisations.*” A similar provision is contained in Article 3(4) of the Great Lakes Protocol. States implementing these provisions should adhere to above registration guidance.

Informing, consulting with and facilitating the participation of IDPs and other displacement-affected communities are essential elements in the collection of relevant data, whether through profiling or registration. This must be undertaken sensitively in order to avoid creating additional risks for the target populations.

3. Deciding whether a legal review of national legislation is necessary and if so at what stage in the process

Law and policymakers should assess whether, in their particular context, it is necessary to review existing legislation in order to determine to what extent it (a) adequately addresses internal displacement, (b) creates obstacles for IDPs and those protecting and assisting them and (c) contains gaps related to IDPs' protection and assistance. It should also be determined whether such a review would provide added value and can be completed within a reasonable timeframe.

Necessity and added value of a legal review

There are four main reasons that a legal review may be necessary or provide added value:

1. If existing national legislation provides an insufficient basis on which to address IDPs' specific rights, needs and vulnerabilities, it is necessary to identify these gaps. If existing national legislation creates unintended obstacles for IDPs to exercise their rights, it is necessary to identify and remove them.
2. If the national instrument is to take the form of a law, it is necessary to establish how it will relate to existing laws and whether it presents contradictions that need amendment or alteration.
3. If the national instrument is to take the form of a policy, strategy or plan, it is necessary to establish whether the framework of existing laws would facilitate or hamper its implementation.

A legal review may precede the development of a national instrument, take place in the course of it or be part of its implementation.

Capacities for a legal review

Justice ministries and parliamentary bodies have central roles to play in a legal review. Such a process may, however, be very time consuming and beyond national capacities and/or expertise, particularly in times of humanitarian crisis. In order to ensure that the development of a much-needed national instrument is not unduly delayed or hindered, it may be advisable to focus on developing a policy, strategy or plan rather than a law, as such an approach can be undertaken with fewer formalities. It may also be helpful to focus on an interpretation of existing national legislation in light of relevant national, regional and international standards until a full legal review and any necessary revisions can be completed.



Steps in conducting a legal review

The following steps may be of use in conducting a legal review:

1. The collection of all existing domestic laws, decrees and ordinances that may be relevant in the context of internal displacement, such as disaster management legislation, child protection law, education law and others;
2. Examination to determine whether existing national legislation (a) contains gaps or obstacles in terms of IDPs' protection, (b) is insufficient to address IDPs' specific needs and vulnerabilities and/or (c) contradicts international and regional legal standards relevant to IDPs' protection;
3. Identification of issues that (a) should be addressed in the national instrument and/or (b) require the amendment or alteration of existing legislation.

In the context of a legal review, states may also consider the ratification of relevant treaties as a step towards strengthening the applicable framework for IDPs' protection.

4. Defining the scope of the envisaged national instrument

Based on an assessment of the displacement situation and, if applicable, the outcome of a legal review, law and policymakers will be able to identify the scope of a national instrument on internal displacement through two steps:

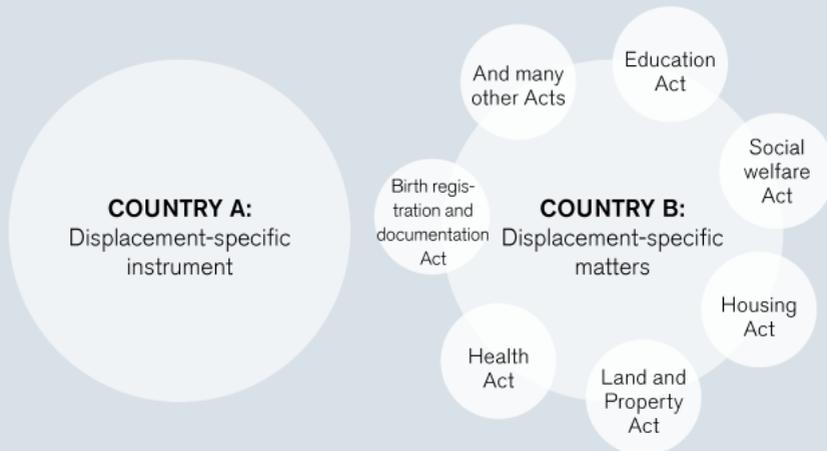
Step 1: Stand-alone displacement-specific instrument, sectoral regulation or a combination?

The first decision to reach is whether the stakeholders involved would prefer to develop a stand-alone displacement-specific instrument, or to address outstanding issues related to IDPs via the amendment or alteration of existing sectoral regulations. A combination of the two approaches is possible and often necessary in order to avoid contradictions between different legal instruments.

	Displacement-specific instrument	Sectoral regulation
Form	A single integrated instrument that covers all matters related to internal displacement and cuts across all relevant areas that require regulation.	Inclusion of displacement-specific regulations into relevant sectoral instruments such as laws, decrees, strategies and action plans on issues including social welfare, education, health, birth registration and documentation, housing, land and property regulations and others, in order to ensure that IDPs are afforded the same protection as the general population.
Advantages	<ul style="list-style-type: none"> ■ Allows the particular circumstances of a country's displacement situation to be addressed in a comprehensive and consistent manner ■ Reduces the risk of unaddressed protection gaps ■ More flexible in terms of format and scope ■ Easier to monitor implementation 	<ul style="list-style-type: none"> ■ Will in most cases be legally binding because they are amendments to existing laws and regulations with legal force ■ Will automatically involve all relevant ministries as they are primarily responsible for the amendment of regulations under their remit
Disadvantages	<ul style="list-style-type: none"> ■ The cross-cutting nature of such an instrument means many ministries and governmental bodies need to be involved, which may cause delay or difficulties in fostering national ownership of the new instrument ■ There may be more political resistance to the creation of a such an instrument 	<ul style="list-style-type: none"> ■ May leave certain gaps unaddressed ■ May carry the risk of uncoordinated activities or lack of cooperation between relevant ministries and other government entities ■ May create challenges for ministries involved in sectoral regulation because of a lack of knowledge and awareness of the particularities of internal displacement

Example: Displacement-specific and sectoral regulation

Country A has a displacement-specific instrument that guarantees displaced children's right to education and provides for free access to primary schools. Country B has no displacement-specific instrument. Its national education act, however, determines that displaced children should be provided with free access to primary schools.



What does the Kampala Convention suggest?

The Kampala Convention provides for both options. Article 3 (2) (a) asks state parties to incorporate *"their obligations under this Convention into domestic law by enacting or amending relevant legislation in the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law (...)"*

Combining a displacement-specific instrument with sectoral regulation may be necessary because:

- Certain matters (e.g. resolution of land disputes faced by returning IDPs) are particularly complex and may be better addressed in the context of existing laws;
- Existing sectoral regulations may need to be amended in order to bring them into line with a displacement-specific instrument.

Step 2: Comprehensive or partial regulation?

The second decision to reach is whether partial or comprehensive regulation of internal displacement issues will be pursued. That is, will the instrument respond to a particular displacement situation, or will it seek to address a range of current and future scenarios? The following questions may merit consideration:

a. What are the advantages of comprehensive regulation?

A comprehensive national instrument that covers all causes and phases of displacement and addresses current and future situations offers greater protection to displaced communities. It also provides the authorities responsible for IDPs with a solid regulatory basis to address all phases of a variety of displacement situations.

What do the Kampala Convention and the Great Lakes Protocol require?

Both the Great Lakes Protocol and the Kampala Convention require their respective provisions to be fully domesticated, making it necessary for state parties to enact comprehensive regulations.

b. Will the instrument be limited in scope? If so, what limitations would be appropriate?

Limiting the scope of a national instrument is possible and, in light of the particularities of the displacement situation, may be appropriate. It may be limited to:

- A particular cause of displacement;
- A particular geographical area;
- A particular phase of the displacement process;
- A particular timeframe.

When limiting the scope of a national instrument, it is important to be aware of the possible consequences of such a step. Limitations must not be discriminatory and must not exclude certain IDPs from exercising their rights.

c. What should the minimum scope of an instrument be?

A national instrument should, at a minimum, address the challenges of the current displacement situation. It should also be flexible enough to anticipate and adapt to changes in the situation. Crucially, it should cover the need to achieve durable solutions as it will provide a much-needed basis on which to engage in the long-term and complex process of doing so.

Non-discrimination despite limited scope

Country A faced a displacement crisis caused by a conflict in its northern regions in a given year, and developed a national instrument to better confront these challenges. The IDPs were still living in displacement a year later, when the conflict-affected area was hit by a large-scale disaster leading to new displacement. Country A did not amend the national instrument, but the national authorities undertook a comprehensive needs assessment of the newly displaced population, and widened the scope of support services, programmes and packages to equitably assist the IDPs displaced by the disaster. This represents a case in which a national instrument with limited scope did not discriminate against or otherwise negatively affect the rights and wellbeing of other IDPs as a result of a pragmatic and non-discriminatory response. That said, in such a situation an amendment of the national instrument to cover IDPs displaced by disasters would have been advisable.

5. Defining the type of national instrument required

A national instrument on internal displacement should improve IDPs' protection and assistance and as a result have positive effects on their wellbeing. To this end, it should:

- Be binding or supported by a clear commitment from the government;
- Clearly allocate responsibilities for implementation to one government entity, or several, that have the requisite political, human and financial capacities; and
- Clarify how sufficient financial and other resources will be allocated to those responsible.

A national instrument can take one or several of the following forms: a law or other legally binding regulation such as a decree; a policy; a strategy or an action plan. The type of instrument chosen should:

- Be adequate to address the displacement situation in question;
- Be appropriate to the country's legal tradition; and
- Take into account the prevailing political landscape.

As discussed below, national legislation, policies, strategies and action plans are not necessarily mutually exclusive tools, but may be complementary. Laws and policies tend to regulate what has to be achieved, while action plans explain how

to achieve set goals. Strategies often combine both elements. Where a legal review would lead to considerable delay in developing a national law, it may be advisable to focus initially on the development of an alternative tool such as a policy or strategy.

A law or other form of legal regulation may be necessary to:	A policy, strategy or action plan may be necessary to:
<ul style="list-style-type: none"> ■ Strengthen an existing policy, strategy or action plan by amending and adapting the domestic legal framework in order to be compatible with the principles and goals they contain; ■ Enable the implementation of a policy, strategy or action plan that identifies and responds to legal gaps or obstacles to IDPs' protection in the domestic legal framework. 	<ul style="list-style-type: none"> ■ Reinforce existing or new national legislation on internal displacement and facilitate its implementation; or to ■ Pave the way for the introduction of legislation at a later stage.

Law or policy? Regional commitments under the Kampala Convention and the Great Lakes Protocol

State parties to the Kampala Convention and the Great Lakes Protocol are required to domesticate the instruments by law. This does not, however, exclude the development of a policy, strategy or action plan. In this regard, Article 3 (2) of the Kampala Convention provides that state parties shall, in addition to enacting or amending relevant legislation, “*adopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels (...)*”

The fourth recommendation of the outcome document of a workshop held in Nairobi in 2009 on the implementation of the Great Lakes Protocols suggests that each member state should decide whether to implement them “*by adopting legislation immediately (...) or by first developing and implementing a policy or strategy*”.

The following distinctions are traditionally made between laws and other instruments such as policies, strategies and action plans.

Laws and other forms of binding regulation

Domestic legal orders vary considerably, but the national constitution is generally the highest-ranking legal norm. It often contains a bill of rights which applies without reservation to all IDPs. The constitution is usually followed by acts of parliament (hereinafter “laws”), and other binding regulations such as decrees, executive orders and ordinances (hereinafter “other forms of regulation”). Constitutional amendments will rarely be needed in the development of a national instrument, but laws and other forms of regulation may be relevant. They create entitlements for individuals, identify national authorities’ obligations and designate bodies responsible for carrying them out. They also usually refer to applicable judicial or administrative procedures to enforce the law or other form of regulation.

Colombia’s law no. 387 of 1997 (amended in 2000 and 2005)

Law no. 387 establishes the Colombian state’s primary responsibility to adopt measures to prevent forced displacement, and for the assistance, protection, socioeconomic consolidation and stabilisation of people internally displaced by violence. In line with international standards, the law sets out IDPs’ rights both before and during displacement and in the context of durable solutions. It creates an institutional framework for addressing internal displacement, known as the National Comprehensive Assistance System for the Displaced Population. The system is comprised of a central coordinating council with planning and advisory tasks, including relevant ministries and high-level officials, and territorial councils to support the law’s implementation at the local level. Other government entities also have specific responsibilities under the law. The central coordinating council is responsible for securing the necessary budget allocations. In 2004, the Constitutional Court reinforced this responsibility by stating that “*from a constitutional point of view, it is imperative to appropriate the budget that is necessary for the full materialisation of the fundamental rights of displaced persons (...)*”. In Decree no. 173 of 1998, the Colombian government adopted the National Plan for Comprehensive Assistance to Populations Displaced by Violence, which aimed to improve implementation of law no. 387.

Policies, strategies and action plans

Policies, strategies and action plans can be developed and adopted more rapidly than laws, as they usually entail fewer formalities. Such instruments are not legally binding in principle, but they may still be so at an administrative level, in that public servants may be obliged to abide by them because they have been approved by cabinet or a relevant ministry. In some countries, policies may be made binding by an act of parliament.

Even though policies, strategies and action plans can be developed relatively quickly, the task should still be undertaken in a transparent and inclusive manner.

The difference between policies, strategies and action plans is often a matter of degree, and they are not mutually exclusive. Rather they may complement each other.



Policies

A policy is a statement of basic principles and declared objectives that guide and direct a government and other parties in their actions to pursue the longer term goals it contains.

- *Key characteristics:* A policy contains general principles and standards and specifies them in accordance with a given country and displacement-specific context to best address IDPs' protection and assistance needs. Institutional roles are also established, including clarification of the general and specific responsibilities of government and other entities and the creation of a coordination mechanism. The concluding sections typically address implementation.
- *Suitability:* A policy allows for a flexible, quick and coordinated approach to existing and potentially future internal displacement due to various causes. It may be a stand-alone document, a precursor to national legislation or a complement to existing legislation. A policy adopted at the highest level of government is usually better than a ministerial policy, not only because of its higher authority but also because it commits all relevant ministries and other government entities to its implementation.

Uganda's National Policy on Internally Displaced Persons of 2004

Uganda's national policy on IDPs comes close to a comprehensive policy in scope. It seeks to protect people from arbitrary displacement, covers all displacement regardless of cause, and aims to address IDPs' rights and needs both while displaced and in the context of durable solutions. As such, it aims to ensure that IDPs have the same rights and freedoms as the general population under the country's constitution and national laws. Its objectives are to minimise internal displacement and its effects by creating an enabling environment for the upholding of IDPs' rights and entitlements, to promote integrated and coordinated response mechanisms, to assist in IDPs' safe and voluntary return, and to guide the development of sectoral programmes for recovery through rehabilitation and the reconstruction of social and economic infrastructure. It also establishes a focal point in the prime minister's office for a multisectoral institutional framework at the national and local level, and specifies the roles and responsibilities of government, national and international entities, including donors.

Uganda's policy draws heavily on the Guiding Principles, but it is not yet fully in line with the country's obligations under the Kampala Convention. It does, however, provide the government with a solid and well-established basis to domesticate the convention.



Strategies

At the core of a strategy on internal displacement lie its strategic goals, based on the identification of key challenges and priorities which are embedded in an overall framework. In order to achieve its goals, a strategy usually identifies methods and actors responsible for addressing the challenges identified and strengthening a coordinated response. Such strategic planning allows for the efficient allocation and use of resources.

- *Key characteristics:* A strategy provides practical guidance to address identified challenges and gaps in the response to internal displacement at various stages. Unlike a policy, a strategy typically lays out a set of options, methods and actions available to effectively address the challenges identified and achieve the envisaged result. Strategies on internal displacement usually allocate responsibilities for specific activities among all actors involved in a response.

- *Suitability*: A strategy is highly suitable for a specific displacement situation in which challenges, obstacles and gaps are identifiable and can be addressed and overcome through a concerted set of actions. A strategy is often used to set out the process, conditions and activities intended to achieve durable solutions.



Action plans

An action plan is a detailed and contextualised scheme outlining a course of action to be followed in order to achieve specific goals or objectives within a prescribed timeframe. It explains in detail what needs to be done when, how, by whom, and with what means. It often includes best, expected and worst case scenarios.

- *Key characteristics*: An action plan is highly specific to a particular displacement situation. It sets out tasks, steps and activities to achieve a specific goal and assigns respective roles and responsibilities in doing so. An action plan also often identifies the financial resources to be used to achieve its goal within an allocated timeframe.
- *Suitability*: An action plan is well-suited to address specific displacement situations, or particular phases of them. They are not necessarily effective as general national instruments to address present and future scenarios. They are, however, very flexible and allow national authorities to address internal displacement quickly, including in emergency contexts. An action plan is often needed to implement a national law, policy or strategy.

Turkey's 2006 provincial action plan to address IDPs' needs in Van

The action plan states that its purpose is to "*highlight potential strategies that will improve the living conditions of IDPs in Van. Given the complexities of IDPs in Turkey, this document serves to provide an introduction to various methodologies (i.e. modes of integration) as well as strategic interventions and actions (i.e. provision of social services) that reflect international standards and the policies of the [Government of Turkey]. The aim is to provide a menu of possible options and recommendations that can be adapted and deployed by the Governorate of Van contingent on dictating socio-economic circumstances and other institutional variables such as the availability of financial and human resources*".

The plan identifies key principles guiding its implementation and activities to be undertaken in strategic sectors. It contains recommendations on the efficient provision of services at the provincial level, and establishes the Van authorities' responsibility for its implementation, coordination and supervision, including evaluation and monitoring. It also acknowledges the roles of other national and international entities. In a log-frame, it sets out the overall aim and actions necessary to achieve it, identifies relevant outputs and output indicators and allocates responsibilities within a specific timeframe.

6. Deciding whether to request technical support from the international community

The development of a national instrument on internal displacement often requires additional capacity and/or expertise. National authorities can request such technical support at any time in the process by contacting the UN's resident or humanitarian coordinator, or any other counterpart in the international community present in the country. Support can be manifold and may include:

- Advising the authority in charge of leading the development of a national instrument;
- Facilitating consultations with relevant stakeholders at the national and local level;
- Undertaking or assisting in a profiling exercise or other assessment of a displacement situation;
- Undertaking or assisting in a legal review;
- Assisting in the technical drafting of an instrument;
- Providing general advice to national authorities throughout the process;
- Advising on and supporting plans for implementation.

These activities may be combined or complemented by other tasks. National institutions such as NGOs or national human rights or international humanitarian law commissions may also be able to offer support depending on the context.

TWO

Stage two outcome: All of the necessary decisions and preparatory measures, assessments and reviews have been made or are being made. External technical support has been requested, if needed, in order to begin organising the process of developing a national instrument.

STAGE | Organising the process of developing THREE | a national instrument

In light of the complex process of developing a national instrument on internal displacement, it must be organised carefully and thoroughly.

Suggested actions:

1. Designate the government body in charge of leading the process and entrust it with the relevant capacities and decision-making powers
2. Identify the relevant national, regional and international entities that can contribute to the process of developing a national instrument
3. Identify the relevant tools for the development and drafting of the national instrument
4. Organise the process under the designated lead

1. Designating the government body in charge of leading the process and entrusting it with the relevant capacities and decision-making powers

National authorities bear the primary responsibility for assisting and protecting IDPs. Law and policymaking is a task inherently linked to this sovereign responsibility, which requires them to lead and own such a process. They designate a ministry, unit or other body to lead the process of developing a national instrument. Typically this is the institution in charge of, or best suited to, dealing with internal displacement issues. If a focal point for displacement issues already exists, it may be particularly well suited for the task. It is important that the body leading the process is entrusted with the necessary decision-making powers.

2. Identifying the relevant national, regional and international entities that can contribute to the process of developing a national instrument

Relevant entities need to be identified, contacted and informed about the envisaged process, and their potential roles and capacities to contribute to and shape the different stages of the process must be clarified. The effective inclusion of relevant entities is indispensable to the successful development and implementation of a national instrument. They may include:

- National and local authorities, members of parliament and parliamentary committees;

- Internally displaced and other displacement-affected communities;
- National civil societies;
- National Red Cross and Red Crescent Societies;
- National human rights institutions and international humanitarian law commissions;
- National research institutions;
- Regional organisations;
- UN agencies;
- International Committee of the Red Cross (ICRC);
- Donors;
- International civil society organisations;
- The UN Special Rapporteur on the human rights of internally displaced persons

Potential involvement at the national level

The following entities may be particularly relevant:



Government bodies

In light of the cross-cutting nature of internal displacement and the human rights issues it raises, the involvement of all relevant ministries and other government bodies is critical at both the national and local level. Where displacement affects a particular area of a country, the participation of local authorities is particularly important. The development a national instrument should strive to be a bottom-up process, starting with consultation in areas affected in order to fully reflect the situation on the ground.



Internally displaced and other displacement-affected communities

IDPs, host communities, those in return areas and those expected to integrate IDPs, all have important contributions to make to the development of a national instrument. They are not only beneficiaries and recipients of humanitarian aid, they are the most important source in terms of identifying gaps and shortfalls in the response. They can report risks to and violations of their rights, bringing to light important protection concerns and demonstrating their coping strategies. They have particularly important contributions to make in terms of durable solutions, the achievement of which must be guided primarily by IDPs' choices.

Consultations with IDPs and other displacement-affected populations should be inclusive and should engage men, women, children, the disabled, the elderly and other groups. Even when communities are represented by traditional leaders or

have nominated representatives, it is important to ensure that the concerns of all groups are expressed, including those of minorities. Such consultations may be with individuals, families or other groups, depending on cultural norms and how those affected feel most comfortable.

Regional instruments on IDPs' inclusion and participation

Article 6 (5) of the Great Lakes Protocol states:

“Member States shall ensure the effective participation of internally displaced persons in the preparation and design of [a national instrument on internal displacement].”

In Recommendation 6 (2006), paragraph 11, the Council of Europe states:

“Internally displaced persons should be properly informed, but also consulted to the extent possible, in respect of any decision affecting their situation prior to, during or after their displacement (...).”

National and local civil society

In many countries, civil society organisations are heavily involved in assisting and protecting IDPs. Their mandates, however, vary considerably. Some address internal displacement in all its aspects, while others focus on the protection of specific groups such as women or children, or have a thematic focus. Many national and local civil society groups work very closely with affected communities and are well informed about the challenges the displaced face and gaps in the response to their rights and needs.

National Red Cross and Red Crescent Societies and the International Federation

The activities and services provided by Red Cross and Red Crescent Societies vary from country to country, with some involved in addressing the immediate and longer-term needs of beneficiaries, including IDPs. National societies tend to be involved in emergency response, disaster preparedness, community-based health care, first aid and the restoration of family ties. In some countries they play an active role in assisting IDPs in their own capacity or as an implementing partner for ICRC. They can be important contributors as a result of their close proximity to affected populations in a similar way to local and national civil society groups.

The International Federation of Red Cross and Crescent Societies (IFRC) is the world's largest humanitarian and development network. It has particular expertise in disaster management and response and in the development of respective legal and policy instruments. In displacement situations primarily related to disasters, IFRC can contribute relevant expertise for the development of national instruments on internal displacement.

 *National human rights institutions and international humanitarian law commissions*

The promotion and protection of IDPs' rights is often part of the mandate of national human rights institutions. If they are involved in monitoring in displacement areas, they may serve as an information channel for displaced communities and as such may have significant insight in terms of the challenges related to the protection of IDPs' rights. National commissions on international humanitarian law can provide invaluable advice on the interpretation and domestic application of this area of law to ensure the compliance of a national instrument.

 *National research institutions*

National research institutions produce reports on displacement situations and assessments of responses which provide important background information for the development of a national instrument.

Potential involvement at the regional and international level

In many displacement contexts, support from regional and international organisations may be available to complement a country's efforts to develop a national instrument on internal displacement.

 *Regional organisations*

Regional organisations such as the African Union (AU), the Organisation of American States (OAS), the Arab League, the Council of Europe (CoE) and the Association of South-east Asian Nations (ASEAN), and sub-regional organisations such as the Economic Community of West African States (ECOWAS), the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC) may have important contributions to make to the successful development of a national instrument.

Most regional organisations have adopted resolutions that call upon member states to develop such instruments and provide guidance in terms of their formulation. Others have expressed more general support for national endeavours in this direction.

Guidance and support from regional organisations

Council of Europe, Recommendation 6 on internally displaced persons (2006)

The Committee of Ministers, in Recommendation 6 on internally displaced persons, stresses its commitment to the Guiding Principles on Internal Displacement and its willingness to support their incorporation into the national legislation and policies of member states. It has also adopted a set of principles to guide European states in their efforts to formulate national instruments on internal displacement.

The Kampala Convention on the role of the AU

Article 8 (3) of the convention identifies an explicit support role for the AU: *“The African Union shall support the efforts of the States Parties to protect and assist internally displaced persons under this Convention (...).”*

UN agencies

The assistance and protection of IDPs is not the exclusive responsibility of any particular UN agency. Rather, a number of humanitarian, development and other agencies become active when internal displacement takes place. They include:

- The Office of the UN High Commissioner for Refugees (UNHCR);
- The UN Office for the Coordination of Humanitarian Affairs (OCHA);
- The UN Children's Fund (UNICEF);
- The World Food Programme (WFP);
- The World Health Organisation (WHO);
- The UN Development Programme (UNDP);
- The UN Office of the High Commissioner for Human Rights (OHCHR).

The agencies act in accordance with their mandates and are, to varying degrees, active in assisting and protecting displaced populations. Their experience and expertise mean they have a valuable role to play in supporting the development and implementation of a national instrument.

The role of the Protection Cluster

In some countries, UN agencies and other organisations work together under the cluster approach, an institutional arrangement through which they respond to humanitarian crises including internal displacement situations. The system involves a number of thematic clusters, for example in the areas of protection, water and sanitation or health. The protection cluster may make significant contributions to the development of a national instrument.



International non-governmental organisations

International non-governmental organisations including the Norwegian Refugee Council (NRC), the Danish Refugee Council (DRC), Oxfam, Médecins sans Frontières (MSF), World Vision International, Care International, or Save the Children are active in many countries affected by internal displacement. The expertise of these and similar organisations can benefit the development of a national instrument.



International Committee of the Red Cross

The International Committee of the Red Cross (ICRC) is a key player in ensuring humanitarian protection and assistance for all victims of armed conflict and violence, including IDPs. Given its specialised expertise in the field of international humanitarian law, it can make significant contributions to the development of a national instrument.



UN Special Rapporteur on the human rights of internally displaced persons

National authorities are welcome to seek support from the Special Rapporteur, who promotes IDPs' human rights through dialogue with governments and other entities. The Mandate-holder has developed important tools, including *Protecting Internally Displaced Persons: A Manual for Law and Policymakers* and this guide, to assist governments in the development of national instruments on internal displacement. The Special Rapporteur has also recommended to many governments to undertake such national law and policymaking, and has provided technical support to that end. He has also encouraged donors to allocate funding for the implementation of national instruments.



Donors

The donor community may play a critical role in the development and implementation of a national instrument, given their expertise and ability to provide the

necessary resources. Their involvement from an early stage may facilitate the process considerably.

3. Identifying the relevant tools for the development and drafting of the national instrument

The following tools are particularly relevant for the development and drafting of a national instrument on internal displacement. They are available on the websites indicated below, or national authorities can contact the UN offices present in their country for copies.

Protecting Internally Displaced Persons: A Manual for Law and Policymakers

This manual is indispensable in the drafting of national laws and policies on internal displacement. In two general and 14 thematic chapters it provides an overview of the problems IDPs often encounter, identifies necessary elements of regulation and sets out their minimum content in checklists. It also contains case studies and extracts from national instruments from a number of countries as examples. It is available in English and French from the Brookings Project on Internal Displacement at www.brookings.edu/idp.

Addressing Internal Displacement: A Framework for National Responsibility

The framework sets out 12 benchmarks of national responsibility and identifies steps towards achieving them. It provides national authorities with an excellent tool to guide them in assuming their primary responsibility for IDPs. The development of a legal and a policy framework are two of these benchmarks. The framework is available in English, French, Spanish, Arabic, Russian, Portuguese, Serbian, Azerbaijani, Sinhala, Tamil and Thai at www.brookings.edu/idp.

IASC Framework on Durable Solutions for Internally Displaced Persons

The framework sets out the concept of durable solutions and provides guidance on the process of achieving them, and criteria to assess progress in doing so. It is very helpful in drafting those parts of a national instrument that deal with durable solutions, and is available in English, French, Arabic, Spanish, Russian and Chinese at www.brookings.edu/idp.

IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters

The development of national instruments that aim to address internal displacement caused by natural disasters may be informed by the important standards and guidance provided in this document. It is available in English, Spanish, Japanese, Hindi and Bahasa Indonesian at www.brookings.edu/idp.

Handbook for the Protection of Internally Displaced Persons

This comprehensive handbook provides operational guidance on the protection of IDPs. It serves as an important source of information and guidance for the development of a national instrument by explaining the foundations of IDPs' protection, identifying typical risks and providing a set of activities to counter them. It is available in English, French, Spanish, Arabic and Russian at: www.reliefweb.int.

ICRC Database on Domestic Implementation

This database contains many examples of laws on IDPs and the new manual on domestic implementation, which refers to IDPs. It is available at: www.icrc.org/ihl-nat and www.icrc.org/eng/resources/documents/publication/pdvd40.htm.

IFRC Legislative Toolbox

IFRC has developed a toolbox on international disaster response law, which includes guidelines, a model Act and a model emergency decree. It may be useful in drafting instruments that address displacement caused by natural disasters and is available at <http://www.ifrc.org/what-we-do/idrl/>.

Kampala Convention: annotations, model law, parliamentarians handbook and civil society guide

Several tools have been developed to support the domestication and implementation of the Kampala Convention, and the Special Rapporteur on the human rights of internally displaced persons is preparing annotations that provide insight into the interpretation of each article, highlighting and clarifying the links between its provisions and other relevant standards. The AU model law and the handbook for parliamentarians prepared by UNHCR and the Inter-Parliamentary Union are available at www.brookings.edu/idp and www.unhcr.org.

IDMC has published a guide for civil society organisations to advocate and otherwise support the domestication and implementation of the Kampala Convention into national laws and policies. The guide is available at <http://www.internal-displacement.org/publications/au-guide>

Brookings-LSE Project on Internal Displacement: national law and policy database

A number of countries have already developed national instruments on internal displacement, which may serve as a source of inspiration. A collection of these instruments are available at http://www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx.

4. Organising the process under the designated lead

The drafting and consultation process should be organised under the designated lead by allocating roles to all parties who will actively participate in and contribute to the development of the national instrument. There are typically four major roles, undertaken by the drafting expert, the drafting committee, the steering committee and the consultation partners.

a. The drafting expert

The drafting expert usually has the technical capacities, legal knowledge and expertise on internal displacement required to draft a national instrument. The support of such an expert can be requested from the international community. Working in cooperation with national entities, their tasks typically include:

- Gathering and using the information available on the displacement situation; Consulting relevant actors in order to understand the main challenges and core issues to be addressed;
- Providing draft input documents for consideration;
- Advising during deliberations and making agreed amendments and changes to the text.

b. The drafting committee

A drafting committee is usually made up of people with the specialised knowledge needed to facilitate the drafting process. Depending on the size of the steering committee (see below), the two committees may be merged.

c. The steering committee

The steering committee is tasked with discussing the draft texts provided by the drafting expert and committee, and deciding on changes and amendments. It is generally made up of representatives from all the relevant stakeholder groups, including IDPs and other displacement-affected communities where possible. It provides an opportunity to engage national, regional and international entities and involve them in the process in order to benefit from their perspectives, contributions and buy-in.

d. Consultation partners

Bilateral and multilateral consultations are important to engage those who do not participate in the steering committee, but have an important contribution to make to the development of a national instrument. Such consultations may be held by

the drafter and members of the drafting committee under the designated lead. Even if IDPs and other displacement-affected communities are represented on the steering committee, broader consultations should still be undertaken in order to make the drafting process as inclusive as possible.

THREE

Stage three outcome: The designated lead is prepared and organised to steer the process of developing a national instrument. Relevant national, regional and international partners have been identified and are ready to support the national authorities in their endeavour.

STAGE FOUR | Drafting and consulting on the national instrument

Drafting a national instrument and consultation with the relevant national, regional and international entities go hand-in-hand.

Suggested actions:

1. Set out a tentative work plan for the process of developing the national instrument
2. Draft the national instrument step-by-step
3. Lead inclusive and transparent consultations with relevant parties before and during the drafting process

1. Setting out a tentative work plan

A tentative work plan should be set out at the beginning of the process. It should:

- Be both realistic and flexible;
- Lay out the different phases of the drafting process;
- Spell out the tasks and goals for each particular phase. Such tasks typically include:
 - the preparation of draft input documents
 - planning, preparing and holding meetings
 - consultations
 - review
- Allocate responsibility for the timely fulfilment of these tasks to the lead, drafting expert, members of the drafting or steering committee or a consulting partner.

2. Drafting the national instrument

A clearly structured, step-by-step approach is generally the best way to ensure the involvement of all relevant parties. Each step allows for consultation with the steering committee and consulting partners, increasing their investment in and commitment to the process and the outcome document.

Possible drafting steps include:

- Preparation of a working paper that outlines the key parameters of the national instrument;
- Preparation of a glossary of key notions and concepts to be used;
- Development of a preliminary outline that provides a very rough structure for the instrument;
- Development of an annotated outline based on the agreed structure, with short explanations of envisaged content;
- Division of the drafting process into different parts to allow for more in-depth consultation on particular elements;
- The merging of the different components into a full and comprehensive draft instrument ready for final revision and validation;
- Submission of the validated draft for adoption (see stage five);
- Adoption of the national instrument (see stage six);
- Implementation (see stage seven).

The drafting expert should provide regular input papers for each step, especially for steering committee meetings, as a basis for discussion and in order to generate an output.

3. Leading an inclusive and transparent drafting process

Each drafting step should include consultation with the national, regional and international entities identified as relevant partners in the process (see stage three).

a. Leading an accountable process: putting IDPs at the heart of the process

The national instrument will primarily affect IDPs. As such, its development should be led in a manner sensitive to their rights and needs and mindful of the obligations to assist and protect them. To do so requires a bottom-up approach starting with consultation at the local level to ensure that IDPs' realities are adequately reflected and addressed.

b. Leading an inclusive process: information, consultation and participation

An inclusive process involves:

- Informing the relevant actors of the state's intention to develop a national instrument, the envisaged process and progress made;
- Sharing drafts and working documents;
- Consultation with relevant actors on working or draft documents, or in order to generate input for such drafts;
- An opportunity for relevant actors to contribute and participate actively in the development of the national instrument.

The degree to which relevant actors are involved depends both on their capacity to contribute and the will of the national authorities to involve them. Regardless of the involvement of other actors, it remains the responsibility of national authorities to decide on the steps taken in the process of developing a national instrument and its content.

The early and genuine inclusion of relevant actors can have a decisive effect on the eventual legitimacy of a national instrument, both in terms of the degree of national ownership established and the willingness of international organisations and donors to support its implementation. A consultative process significantly lowers the risk of developing an instrument that has only symbolic value.

c. Leading a transparent process

The importance of an inclusive process is closely linked to the need for transparency. This may be promoted by:

- Publicly stating the intention to develop and implement a national instrument, and explaining the process for doing so in terms that are understandable to IDPs themselves;
- Providing regularly updated information on the process, progress made and challenges faced to the actors involved and other key stakeholders, including IDPs;
- Being clear with IDPs and other displacement-affected communities about the impact the national instrument may have on their situation and what they can and cannot expect.

STAGE | Validating the draft national instrument

FIVE

Before the government or parliament adopt the draft instrument, it may benefit from a validation process, which provides another opportunity for changes and amendments.

Validation may help create support for the national instrument and ensure its effective implementation. It may help to consolidate the draft and ensure the buy-in and support of all relevant government bodies and other partners, in particular donors. Sometimes, a careful validation is necessary to overcome initial criticism and skepticism. It can demonstrate the national authorities' commitment to addressing internal displacement in an equitable, rights-based manner. The designated lead is responsible for deciding whether to undertake a validation process, in consultation with other relevant parties.

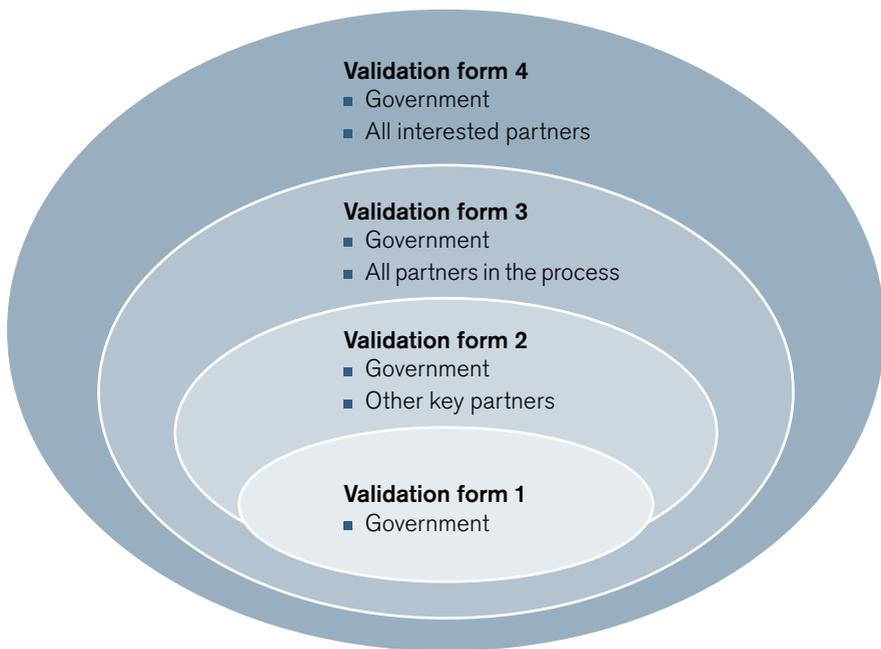
Suggested actions:

1. Decide whether to undertake a validation process, and if so who will take part
2. Validate the content and finalise the draft
3. Prepare to submit the draft for adoption

1. Deciding who will take part in validation

Validation generally takes place under the designated leader(s) of the overall process, and it may be undertaken at the national and/or local level. It can take different forms, such as:

1. An exclusively government process involving, for example, an inter-ministerial working group established for the task;
2. A government process that also includes the most relevant partners involved in the development of the draft, usually steering committee members and key donors;
3. An open process that includes all those who have contributed to the development of the draft, including IDPs and other displacement-affected communities;
4. An open process that includes not only all those who have contributed to the development of the draft, but also other interested stakeholders who may contribute to and broaden support for it.



2. Validating the content and finalising the draft

The aim of any validation process is to consolidate the content of the draft national instrument and garner support for it from all relevant parties. At the end of the process, the draft should be ready for submission to the competent authorities for formal adoption. It should meet all formal requirements, including in terms of language, length and format.

Validation workshop in Afghanistan, 2013

In June 2012, Afghanistan's Ministry of Refugees and Repatriations convened a policy development workshop that initiated a consultative process to develop a national policy on internal displacement. The policy was drafted step-by-step through broad consultations in a number of displacement-affected provinces and at the national level. The finished draft was eventually presented to a successful validation workshop in May 2013, which brought together all the stakeholders who had contributed to the process, including IDPs and donors. Following validation, the draft was finalised and submitted for adoption.

3. Preparing to submit the draft for adoption

The authority in charge of adoption, and the formal procedures necessary to submit the draft national instrument should be identified and the necessary steps taken for such submission.

FIVE

Stage five outcome: The validated draft is ready and all steps have been taken to submit it to the authority in charge of adoption.

STAGE SIX | Adopting the national instrument

The adoption of a national instrument as a law or other form of legal regulation, or as a policy, strategy or action plan makes it final and applicable. It becomes a key expression of the state's commitment to address IDPs' protection and assistance needs. Adoption procedures and the body in charge vary, and depend on the type of instrument involved and the country's legislative and bureaucratic systems.

Suggested actions:

1. Undertake final deliberations on the draft text
2. Adopt the final text

1.Undertaking final deliberations on the draft text

Depending on its format and the relevant domestic procedures, the national instrument may be adopted by the ministry in charge of internal displacement matters, an inter-ministerial committee designated to consider such matters, the government as a whole, and/or parliament. The given authority will usually hold final deliberations on the draft text and may make any last amendments necessary to achieve agreement on adoption.

2.Adoption of the final text

The formal adoption of the final text will follow the prescribed procedures of the country in question. The official national instrument is then usually published and shared across government and with other national, regional and international entities.

Kenya: A champion for an IDP instrument

Kenya adopted its Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act in 2012. The act was developed through a consultative and highly interactive process involving MPs, official government drafters, staff from relevant government ministries, the national human rights commission, national civil society and UN representatives. The chair of the parliamentary select committee on IDPs, the Honorable Ekwe Ethuro, championed the act. He tabled it as a private members bill and steered the process by defending its conformity with Kenya's international obligations under the Great Lakes Protocol through a number of parliamentary hearings until adoption.

SIX

Stage six outcome: The national instrument is formally adopted and published, ready for dissemination and implementation.

STAGE SEVEN | Implementing and monitoring the new national instrument

The efficacy of the new national instrument will hinge on its implementation. Primary responsibility lies with the designated government focal point (see part III below), but implementation often requires cooperation and coordination among many other relevant stakeholders, not to mention the necessary human and financial resources.

Suggested actions:

1. Plan and coordinate the implementation of the national instrument
2. Undertake initiatives to improve knowledge and capacities on internal displacement in general and the national instrument in particular
3. Monitor and evaluate its implementation

1.Planning and coordinating implementation

Effective implementation of the new national instrument requires:

1. The designated government focal point to have the capacity to lead and oversee the process;

2. The necessary financial resources to be allocated;
3. Coordination and collaboration with the relevant national, regional and international partners, including the donor community, particularly if national efforts and resources are insufficient to enable comprehensive implementation and monitoring.

The full and effective implementation of the national instrument will generally be achieved gradually. As such, the prioritisation of implementation activities may be an important part of the process, bearing in mind the need to ensure an equitable approach. Prioritisation may address a range of thematic and/or geographical concerns, and should ensure that the most serious challenges and urgent needs of displacement-affected communities are addressed first. In order to prepare for prioritisation and/or ensure the appropriate allocation of funds, it is advisable to map out implementation needs and identify possible actions and responsibilities at both the national and local level immediately after adoption. Some national instruments themselves provide for the development of such implementation action plans.

The six W's of an implementation action plan

Who undertakes what activity, where and when, using which funding and under whose leadership?

Who? This question identifies those responsible for implementing particular aspects of the national instrument.

What? This question identifies the specific activities to be undertaken in line with the chosen thematic priorities.

Where? This question identifies the geographical area(s) where priority activities are to take place.

When? This question determines the specific timeframes for the various parts of the implementation process.

Which funding? This question prompts leaders to identify sources of funding for specific activities.

Whose leadership? Drawing on the structures established by the national instrument, this question ensures that responsibility for specific activities is clear.

2. Undertaking initiatives to improve knowledge and capacities

The development of the national instrument will hopefully have provided a good opportunity for all parties involved to improve their knowledge and capacities on internal displacement, clarify key concepts and so establish a common basis for addressing internal displacement in the country. Implementation may require on-going capacity building for everyone involved, including local authorities or staff of relevant ministries at the local level in federal or decentralised states. Dissemination and awareness raising, including with displacement-affected communities, may be required in order to ensure that all relevant actors have appropriate knowledge and understanding of the instrument. Several organisations, including the Internal Displacement Monitoring Centre or the Brookings-LSE project on internal displacement offer regular trainings and other capacity building initiatives on internal displacement. Their services may be called upon.

3. Monitoring and evaluating implementation

Monitoring and evaluating implementation serves two primary purposes:

1. **Measuring progress:** It is important to measure the progress made in implementation of the instrument and assess its impact on IDPs. Progress assessments are also important for donors if they are to continue to support the implementation activities.
2. **Promptly identifying obstacles and gaps:** Obstacles and gaps in the implementation process can be problematic and costly if they are not quickly identified and addressed.

An implementation action plan can help to measure progress and identify obstacles and gaps. In order to maximise its potential, any such plan should clearly identify a body with monitoring expertise and experience, establish monitoring periods and require the national institutional focal point to convene regular or ad hoc meetings to take stock of the implementation process.

SEVEN

Stage seven outcome: The national instrument improves IDPs' living conditions and contributes to the achievement of durable solutions.

Final remark: Keeping the process on the national agenda

Given the complexity of the consultative development of a national instrument on internal displacement, national and other entities may have to make substantial efforts to keep the process on the national agenda. The periods between validation and adoption, and then between adoption and implementation, are particularly important in this sense.

The following measures may help to sustain momentum for the development and implementation of the instrument:

- Ensuring the government body entrusted with leading the process is equipped with the necessary capacities and decision-making powers to maintain the pace of the process;
- Advocacy by other national, regional and international entities with their relevant governmental counterparts and, if applicable, with parliament for swift adoption and implementation. A national champion may be identified to pursue the process;
- Expressions of commitment and support for implementation from other national, regional and international entities during the process;
- The making and honouring of financial commitments for implementation;
- Ensuring that national, regional and international entities' planning and programming is in line with the instrument, even if not yet adopted, giving effect to expressed commitments.

Part III

The content of national instruments on internal displacement

The following sections address key questions and issues that those involved in the development of a national instrument on internal displacement have confronted, and makes suggestions as to how they may be addressed. It does not provide a comprehensive overview of the possible content of such an instrument, but the Brookings Institution's Manual for Law and Policymakers provides this holistic information.

Who is an internally displaced person?

According to the Guiding Principles, IDPs are *“persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects 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.”* This notion has been codified in the Kampala Convention (Article 1 (k)) and the Great Lakes Protocol (Article 1 (4)).

Related questions

 *Do IDPs have or need a particular legal status?*

Being internally displaced is not a question of legal or administrative status but a real-life situation. As citizens or habitual residents of the country in which they are displaced, IDPs are entitled to protection and assistance and do not need to be accorded a particular status in order to acquire these rights. As such it is not necessary for a national instrument to create a particular status for IDPs. Indeed, a special status may increase the risk of stigmatisation and discrimination, and create obstacles to the resolution of the displacement. It is, however, important to note that while being an IDP is not a question of status, in some circumstances it

may be appropriate to grant IDPs particular entitlements in accordance with their specific needs.

? *Are those displaced within areas controlled by insurgents IDPs?*

■ People displaced within a country's borders should be considered IDPs irrespective of their location, including if they are in territory controlled by insurgent, dissident or occupying forces. IDPs in such locations are entitled to the same protection and assistance as those who flee to areas under government control. Should access to them be difficult for the government, national or international organisations such as UN agencies, Red Cross or Red Crescent societies and ICRC should be asked to assist them. A national instrument can facilitate humanitarian access by recognising the role of such organisations in these circumstances.

? *Do those living outside of camps count as IDPs?*

■ IDPs live in a variety of circumstances, including in camps, in informal settlements, with host families and in independently rented or purchased accommodation. The majority of the world's IDPs take refuge outside camps. A national instrument can ensure that this variety is reflected and publicised to decrease the risk of oversight, neglect and discrimination between different groups of IDPs.

? *Is a returning refugee or asylum seeker also an IDP?*

■ Returning refugees and asylum seekers may become IDPs after returning to their country if they are subsequently forced to flee internally. Such situations often occur when refugees return to countries affected by ongoing conflict and insecurity or recurrent disasters. Refugees who return to their home country but are unable to return to their places of origin or find an alternative durable solution find themselves in a situation very similar to that of IDPs. It may be argued that they even become IDPs as their search for a durable solution within their home country is stalled. In such a context it makes sense to look at solutions for IDPs and returning refugees concurrently and address the needs of both groups on equal terms. Care needs to be taken, however, that IDPs do not become neglected when refugees return in large numbers.

People who transit through another country before returning to find refuge in a safer part of their own country are considered IDPs. It is not their flight route that is decisive, but the fact that they found refuge within the internationally recognised borders of their own country.

? *Can foreigners become IDPs?*

Foreign nationals and the stateless can become internally displaced if they are habitually resident in the country in which they are forced to flee. Irregular migrants may find themselves in a situation similar to that of IDPs and they are entitled to protection and assistance under general human rights and international humanitarian law. The fact that they are displaced does not mean, however, that they must be granted permission to stay permanently in the country.

Refugees have a legal status established in international and regional refugee law. They may become displaced within their country of refuge in the course of a conflict or disaster, but this does not alter their status or lead to the loss of their rights as refugees in legal terms. Operationally, however, it may make sense to address their humanitarian and protection needs together with those of IDPs, particularly if they are sheltering in the same places.

? *Are homeless people IDPs?*

The relationship between IDPs and the homeless can be difficult to conceptualise and navigate, particularly in urban settings. Homeless people and members of poor urban communities often suffer marginalisation, impoverishment and human rights violations in their areas of residence, but this does not make them IDPs.

IDPs who are displaced within urban centres or seek refuge there can be difficult to identify and urban poor and homeless people may have similar needs. IDPs may not even identify themselves as such, although they may experience particular vulnerabilities, for example in relation to tenure security and housing, land and property rights. In such situations, the development of a national instrument on internal displacement should be informed by efforts to clarify the specific needs and vulnerabilities of urban IDPs through profiling and household surveys. A national instrument can usefully establish measures to address the specific needs of urban IDPs through activities that also benefit other community members in a similar situation.

Natural disasters, especially such as earthquakes and others that cause destruction of homes and infrastructure, cause internal displacement and homelessness. Those displaced may have fled only short distances to seek safety, while homeless people have remained on the premises of their homes. Most often they face a similar situation and needs. A national instrument can best pay justice to such a situation by

establishing whether the displacement caused specific needs and by suggesting area- and community-based approaches to address the needs of both groups, while paying attention to specific challenges displacement may have caused.

? *Can the concept of an IDP set out in the Guiding Principles be amended or altered in a national instrument?*

All UN member states have recognised the Guiding Principles as an important framework for IDPs' protection and assistance. Doing so represents a strong political commitment on behalf of the governments concerned, but it does not amount to a legally binding obligation. States can broaden the definition of an IDP in a national instrument, but narrowing it may be problematic. A law or policy may focus on a specific cause, caseload or phase of internal displacement, but the state and other national and international entities still have responsibilities to assist and protect all those considered IDPs under the terms of the Guiding Principles. A national instrument that focuses on a specific cause, caseload or phase should not entail discrimination against or inequitable treatment of other IDPs. It is not legitimate, for example, to recognise, protect and assist those displaced by insurgents but not those forced to flee by government forces.

Conceptualising internal displacement in the Great Lakes Protocol and the Kampala Convention

The Great Lakes Protocol (Articles 1(4) and 6 (4) (a)) and the Kampala Convention (Article 1(k)) reflect the notion of an IDP as set out in the Guiding Principles. States with obligations under these standards should ensure that any national instrument on internal displacement is consistent with them.

Framing the content

Drafters of national instruments are encouraged to:

1. Include a definition of an IDP that is fully compatible with the Guiding Principles and, if applicable, regional instruments (even if the instrument focuses on a particular subset of the displaced population, it is nonetheless important to recognise these relevant standards);
2. Recognise, if desirable, that the instrument also covers those such as returning refugees, who find themselves in a situation similar to that of IDPs;
3. Adopt an approach that allows the needs of the homeless and other poor communities to be addressed along with those of IDPs in urban areas, where they are

hard to distinguish or face similar conditions. This could be done by ensuring that the policy strives to ensure continuity and consistency between humanitarian assistance and longer term development plans and integrates the resolution of internal displacement in national development and poverty alleviation plans.

What is a displacement-affected community?

Displacement-affected communities bear the consequences of internal displacement. They include IDPs themselves, host communities, communities in return areas and those into which former IDPs integrate.

Related questions

What challenges do host communities face?

Host communities face a range of challenges. They may, for example, have to share their goods, services and economic and natural resources among a much larger number of people than normal. This often puts a strain on basic services such as schools and health clinics, and limits the availability of livelihood opportunities, agricultural land, food and water. Such strains can be particularly severe for poor urban communities, which have only very limited capacity to absorb IDPs.

Why is it important to address the situation of displacement-affected communities in a national instrument?

Members of host communities and those into which IDPs seek to integrate may feel resentment if only the displaced receive benefits, particularly if they are also in need. This may create tensions and even lead to hostilities. Addressing the needs of IDPs and members of other displacement-affected communities through area-based approaches can promote peaceful coexistence and reduce obstacles to (re)integration.

Framing the content

In a national instrument, law and policymakers may want to:

1. Explicitly acknowledge the burden or challenges facing displacement-affected communities, including host and communities in return areas;
2. Promote community or area-based responses where possible and appropriate, and particularly in situations in which the needs of other displacement-affected communities are similar to those of IDPs.

What does national responsibility mean?

The primary duty and responsibility to provide IDPs with protection and assistance lies with the relevant national authorities (Guiding Principle 3). This responsibility flows from, and is an expression of, the sovereignty of states. The development of a national instrument on internal displacement helps to fulfil this responsibility and the existence of such a document is also an important indicator that a state is taking its obligations seriously.

Related questions



What does the exercising of national responsibility entail?

A state's responsibility starts with the prevention of internal displacement and protection from arbitrary displacement. When displacement cannot be averted, national governments are responsible for protecting and assisting IDPs, and supporting them in their search for durable solutions. *Addressing Internal Displacement: A Framework for National Responsibility* is a useful tool that identifies benchmarks for full state responsibility towards IDPs and assists authorities in assuming it.



When should a government request international support?

If national capacities are stretched or overwhelmed and the government is unable to protect and assist all IDPs in need of support, or if it is unable to access certain areas of the country, international support may play a critical role in an effective response. Requesting and accepting international support is an expression of a government's responsibility towards its displaced population.

Framing the content

In a national instrument, it may be essential to:

1. Clearly recognise the government's primary duty and responsibility to prevent displacement, protect from it, assist and protect IDPs and support durable solutions;
2. State that all authorities at the national and local level and other entities will observe and implement the national instrument without discrimination.

What is a national institutional focal point on internal displacement?

A national institutional focal point is the body within a government designated to pay sustained attention to internal displacement. It facilitates coordination within the government and with other national and international entities. It may also participate in activities to address displacement, although the relevant line ministries and local authorities are usually the main implementers.

The content of a government's primary responsibility

Council of Europe, Recommendation 6 on internally displaced persons (2006), paragraph 4

"Protecting internally displaced persons and their rights as well as providing humanitarian assistance to them is a primary responsibility of the state concerned; Such responsibility entails requesting aid from other states or international organisations if the state concerned is not in a position to provide protection and assistance to its internally displaced persons; This responsibility also entails not to arbitrarily refuse offers from other states or international organisations to provide such aid (...)"

Great Lakes Protocol, Article 3 (10)

"Where Governments of Member States lack the capacity to protect and assist internally displaced persons, such Governments shall accept and respect the obligation of the organs of the international community to provide protection and assistance to internally displaced persons."

Kampala Convention, Article 5 (6)

"States Parties shall provide sufficient protection and assistance to internally displaced persons, and where available resources are inadequate to enable them to do so, they shall cooperate in seeking the assistance of international organisations and humanitarian agencies, civil society organisations and other relevant actors. Such organisations may offer their services to all those in need."

Related questions

? *What type of entity is usually designated as a national institutional focal point?*

Various types of entity can serve as a national institutional focal point. It may be an existing ministry or department, or a body exclusively dedicated to displacement issues. The latter are often situated in the office of the president or prime minister. Alternatively, a committee or task force made up of representatives from all relevant ministries and departments under a designated chair may assume the responsibility.

? *What is the role of a national institutional focal point?*

The national institutional focal point is the first port of call in all matters relating to internal displacement and may act as a provider of last resort within a government if it has the operational capacity to do so. It may assume the following tasks:

- Ensuring that evolving displacement situations receive sustained attention;
- Coordinating responses with relevant branches of government and local authorities;
- Building partnerships and coordinating with civil society and international entities, including donors;
- Monitoring and evaluating responses;
- Developing guidelines, action plans and contingency plans to strengthen responses;
- Ensuring that information and data are shared;
- Serving as an accessible point of contact for the representatives of displacement-affected communities.

In order to carry out these tasks, the national institutional focal point will require adequate financial resources, trained and dedicated staff at both the national and local level, and the authority and power to coordinate effective, rights-based responses. It should be prepared to convene regular and ad hoc meetings to measure the progress made in the implementation of the national instrument and to make decisions aimed at strengthening the implementation process.

The national institutional focal point in the Kampala Convention and the Great Lakes Protocol

Kampala Convention Article 3 (2b): “States Parties shall: (...) c. Designate an authority or body (...) responsible for coordinating activities aimed at protecting internally displaced persons and assign responsibilities to appropriate organs for protection and assistance, and for cooperating with relevant international organisations or agencies, and civil society organisations, where no such authority or body exists (...)”

Member states of the Great Lakes Protocol are required to ensure that their national instrument specifies the government bodies responsible for IDPs' protection and assistance and for ensuring implementation of the national instrument (Article 6 (4)(c)). Member states are also required to “*provide for the channels of engagement and cooperation between the organs of government, organs of the United Nations, the African Union, and civil society (...)*” (Article 6 (4)(d)).



How does it relate to other relevant parts of the government?

The national institutional focal point is usually the expert body within the government on displacement-related matters. It generally has a strong coordination role with other government bodies, and liaises with local authorities in displacement-affected areas.

Framing the content

In a national instrument, it may be necessary to:

1. Explicitly designate a national institutional focal point on internal displacement;
2. Define its status, role and relationships with relevant ministries, other government bodies and other national, regional and international entities;
3. Describe its tasks;
4. Determine its powers and resources.



What does the prevention of internal displacement entail?

Efforts to prevent internal displacement include measures that aim to eliminate or mitigate the causes of displacement. They may entail the integration of displacement concerns into disaster risk reduction activities. Preventive measures are most likely to be effective if they are adapted to local contexts. Those employed in the context of armed conflicts are likely to be different to those introduced in natural disaster situations. A combination of different measures at the national and local level may also be required. The following may be important elements of a prevention framework:

- Upholding respect for the bill of rights enshrined in the constitution and for obligations assumed under regional and international law, in particular human rights and international humanitarian law;
- Reviewing, adopting and/or enforcing national laws and regulations that prohibit acts that lead to arbitrary internal displacement;
- Systematically building and strengthening the capacities of all relevant civilian, police, military and judicial institutions to uphold human rights and international humanitarian law;
- Addressing and eliminating root causes of displacement, including through poverty alleviation, affirmative measures for underdeveloped areas and other similar initiatives;
- Preventing the political, social, cultural and economic marginalisation or exclusion of communities;

- Ensuring access to justice and peaceful mechanisms to settle disputes;
- Establishing accountability for arbitrary displacement;
- Promoting disaster risk reduction efforts.

Related questions



What is the relationship between efforts to prevent displacement, and the right to seek safety or asylum?

Efforts to prevent displacement are an important element of state responsibility, but they may not eliminate all factors that lead to it. If preventive measures are only partially successful, flight may be the only way to escape the effects of violence, armed conflict or natural disasters. Given the right to freedom of movement, it is clear that everyone has the right to seek safety in another part of the country or to seek asylum beyond its borders. The state may have an active obligation to facilitate evacuations and establish safe corridors for people fleeing their homes.



What duties do national authorities have when displacement cannot be prevented?

Effective emergency preparedness is essential to safeguard human rights, and to ensure the efficient use of available resources during crises. Preparedness measures may include:

- Monitoring areas where the risk of internal displacement is high and maintaining functional early warning mechanisms;
- Preparing and updating contingency plans;
- Preparing for population movements by procuring, pre-positioning and storing essential supplies, pre-selecting safe sites and planning for rapid needs assessments and relief distribution;
- Public education programmes to prepare populations at risk of displacement;
- Issuing early warnings and evacuation orders when relevant;
- Ensuring that everyone is able to leave a danger zone.

Framing the content

In a national instrument, law and policymakers may want to:

1. Acknowledge the negative consequences of internal displacement for the country, affected communities and individuals;
2. Integrate prevention principles;
3. Identify current and potential causes of displacement and measures to address them in a preventive manner, including disaster risk reduction activities and/

- or the establishment of a risk monitoring body with early warning capacity;
4. State the government's commitment to mitigate the consequences of displacement by minimising its effects when it cannot be prevented;
 5. Assign roles and responsibilities for prevention and preparedness measures;
 6. Acknowledge the right to freedom of movement, the right to seek safety in another part of the country and the right to seek asylum.

What does the prohibition of arbitrary displacement mean?

International law prohibits arbitrary displacement which renders acts of internal displacement largely unlawful, with certain narrow exceptions.

Related questions

In what circumstances is internal displacement arbitrary?

Principle 6 of the Guiding Principles identifies the circumstances in which internal displacement is arbitrary and therefore unlawful and prohibited. Article 4 of the Kampala Convention also contains an almost identical definition.

Prohibition of arbitrary displacement, Principle 6

According to the Guiding Principles, displacement is arbitrary and so prohibited in the following circumstances:

- a. *"When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in alteration of the ethnic, religious or racial composition of the affected population;*
- 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 that 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;*
- e. *When it is used as a collective punishment."*

In situations of generalised violence, internal displacement is arbitrary if it is instigated by politicians, the media or other parties with similar powers to influence the public.

? *If the government evacuates people to protect them from threats, is this arbitrary displacement?*

When there is a serious and imminent threat to life, limb and health, competent authorities have an obligation to protect the population under their jurisdiction, including in some cases through evacuation. This usually takes place during emergencies and is a temporary measure to safeguard the life and integrity of people who would otherwise have been exposed to threats posed by conflict, violence or disasters.

It is not easy to leave everything behind, even in emergency situations, and those organising an evacuation may be confronted with people who are unwilling to follow their orders or who actively resist them. Particularly if they are forced, evacuations need to be:

- a. Provided for by national law;
- b. Absolutely necessary under the circumstances to respond to a serious and imminent threat to life or health and only undertaken if there are no other less intrusive options to counter the threat; and
- c. Carried out in a manner that fully respects evacuees' rights.

People facing evacuation should be properly informed about the need and basis for it, the procedures and their destination. Doing so can help to secure consent and cooperation. Evacuation should not expose people to new risks. Evacuation routes and sites must be safe, evacuees' immediate needs addressed, and the whole process carried out with respect for the human rights of those affected.

? *If the government evicts people from their homes, is this arbitrary displacement?*

Unlike evacuations, evictions usually take place outside emergency contexts. Legal protection should be available to those at risk. In order to ensure that they do not amount to arbitrary displacement, evictions must be

- a. Authorised and carried out in accordance with the applicable law;
- b. Justified by compelling and overriding public interests in the particular case; and
- c. Undertaken only when no feasible alternatives exist.

Procedures for displacement caused by evictions should provide for inclusion and effective remedies for those affected and, if applicable, just and fair compensation.

Criminal accountability

Establishing criminal accountability for arbitrary displacement and other offences against IDPs is a relevant measure to prevent arbitrary displacement and other offences. Kenya's Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act of 2012, for example, states in Section 23:

"(1) No person shall cause, aid or abet arbitrary displacement through acts that amount to genocide, a crime against humanity or a war crime in accordance with international law and shall be punished in accordance with the International Crimes Act, 2008.

(2) No person shall intentionally

(a) cause the arbitrary displacement of other persons as provided for in section 6 of this Act;

(b) impede access to internally displaced persons;

(c) cause harm to internally displaced persons;

(d) cause harm to humanitarian personnel;

(e) impede the work of humanitarian personnel;

(f) obstruct the provision of humanitarian assistance to internally displaced persons;

(g) steal, or loot, or destroy humanitarian supplies for internally displaced persons; and

(h) misuse or abuse the use of humanitarian assistance for internally displaced persons;

(i) aid or abet the commission of any of the acts or omissions specified in paragraphs (a) to (h)."

Framing the content

In a national instrument, law and policymakers may want to:

1. State that arbitrary displacement is prohibited and is a punishable crime;
2. Set out the grounds, conditions and procedures for emergency evacuations;
3. Set out grounds, conditions, standards and procedures for evictions.



What does assistance and protection mean?

Assistance is a primary responsibility of the government, and refers to the provision during crises of relief in the form of material and logistical support to ensure

survival and uphold dignity. Direct humanitarian assistance generally includes food, water, shelter, health care, sanitation and education. Such provisions may be complemented by indirect assistance such as infrastructure support and the upgrading of basic services in areas affected by influxes of IDPs. Humanitarian assistance is normally intended as a short-term, lifesaving measure. Displacement situations, however, are often protracted, and appropriately tailored development support may also be essential. This should aim to ensure that members of displaced communities can access livelihoods and achieve self-sufficiency, in order to avoid creating dependency or to overcome it in cases where it has set in.

IDPs' protection is equally important and is also a primary government responsibility. Governments are obliged to respect IDPs' rights; prevent, protect against and stop violations against them including those perpetrated by insurgent groups; counter discrimination; and remove obstacles to their exercising their rights, especially by establishing an environment that is conducive for respect for rights and the rule of law. Protection and the ability to exercise one's rights are indispensable for human development and as such essential to the achievement of durable solutions. IDPs' rights are spelled out in the Guiding Principles, and the Kampala Convention builds on the recognition of these rights and creates respective obligations for authorities and other entities.

Related questions

 *Is there a hierarchy in rights of internally displaced persons or are they all to be protected at all times?*

In general, there is no hierarchy in terms of IDPs' rights. Rather, human rights are indivisible. In practical terms, however, ensuring survival is of the utmost priority during the emergency phase of a humanitarian crisis, and this may mean that the rights to life, physical safety, food, water and sanitation, shelter, health care, education and protection from family separation are prioritised. Beyond the emergency phase, and in the context of return or other durable solutions, IDPs' other rights become equally important.

The national instrument should stress that the overall aim is to restore and protect the full range of IDPs' rights, because human rights provide the necessary minimal protection to people in distress. It may be legitimate to highlight the particular importance of certain rights during the emergency phase, but the restoration and enjoyment of all rights without discrimination is indispensable to the achievement of durable solutions.

 *What do the terms “rights-based approach” and “needs-based approach” mean, and what are the implications for national instruments on internal displacement?*

- A rights-based approach puts IDPs' rights at the centre of response efforts, while a needs-based approach takes their needs as the point of departure. The two approaches are not mutually exclusive, but reinforce each other because in most cases specific needs have equivalent human rights. If IDPs are in need of food, for example, the right to food is the corresponding human right. As such, national instruments may therefore integrate a combined rights-based and needs-based approach.

 *What does adequate humanitarian assistance entail?*

In order to be adequate, humanitarian assistance must be:

- a. Available in sufficient quantity and quality;
- b. Accessible to all IDPs;
- c. Acceptable to the recipients, bearing in mind issues of culture, age, gender and diversity;
- d. Adapted to changing needs at different stages of displacement.

Humanitarian assistance should be provided without discrimination on the basis of assessed needs. If the government is unable to meet the assessed needs, international support may be required. Participatory and community-based approaches can play a significant role in ensuring the effective delivery of assistance.

 *How can national instruments on internal displacement promote IDPs' self-reliance?*

- Displacement can undermine the ability to practice traditional livelihoods, prompting reliance and dependency on humanitarian assistance, which is often limited and costly to provide especially over prolonged periods. National instruments on internal displacement can encourage IDPs' self-reliance by addressing issues such as equitable access to basic services, skills and vocational training and primary and higher education, and through the creation of apprenticeship and small scale livelihood programmes during displacement. Any such initiatives should aim to promote IDPs' permanent self-reliance, which is essential to the achievement of durable solutions.

Framing the content

In a national instrument, law and policymakers may want to:

1. Recognise IDPs' right to request and receive humanitarian assistance, and to have their rights protected and enforced;
2. Commit to placing IDP's rights and needs at the heart of decision-making, relief, recovery and development efforts;
3. Adopt participatory and community-based approaches where appropriate;
4. Integrate measures to support IDPs' self-reliance.



What is humanitarian access?

When a displacement situation overwhelms national capacities and available resources are insufficient to meet all IDPs' needs, complementary external support from international organisations is required. These organisations depend on the state granting humanitarian access to the territory of the state and to areas affected by displacement in order to deliver assistance and protection. Such access requires the state's consent; however, international organisations have a right to offer their services in support of IDPs, and such offers should be considered in good faith and must not be arbitrarily rejected.

Related questions



Which international standards address humanitarian access?

A wide range of international laws are relevant to the question of humanitarian access. International humanitarian law, for example, requires states to allow and facilitate rapid and unimpeded access to civilians in need during times of armed conflict. The obligation under Article 2 (1) of International Covenant on Economic, Social and Cultural Rights to fully realise human rights entails a state's obligation to *"take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights (...)"*. The Kampala Convention requires national authorities to request international assistance when available resources are inadequate to protect and assist IDPs (Article 5 (6)), as does the Great Lakes Protocol (Article 3 (10)).



What principles govern the delivery of humanitarian assistance by international humanitarian organisations?

Subject to available resources, international humanitarian organisations provide assistance and protection in accordance with their respective mandates and the

Obligations of international humanitarian organisations (Kampala Convention, Article 6)

"1. International organisations and humanitarian agencies shall discharge their obligations under this Convention in conformity with international law and the laws of the country in which they operate.

2. In providing protection and assistance to Internally Displaced Persons, international organisations and humanitarian agencies shall respect the rights of such persons in accordance with international law.

3. International organisations and humanitarian agencies shall be bound by the principles of humanity, neutrality, impartiality and independence of humanitarian actors, and ensure respect for relevant international standards and codes of conduct."

humanitarian principles of humanity, neutrality, independence and impartiality. They should carry out their activities with respect for the sovereignty of the countries in which they operate. Their adherence to humanitarian principles ensures the integrity and non-politicised nature of their work.

Framing the content

In a national instrument, law and policymakers may want to:

1. Acknowledge the right of international humanitarian and other organisations to offer their services in support of IDPs, and commit to consider such offers in good faith;
2. Commit to request international assistance when national capacities are overwhelmed and insufficient to address IDPs' assistance and protection needs;
3. Set out transparent and simple criteria and procedures for the granting of rapid and unimpeded humanitarian access to displaced communities;
4. Remove administrative and legal obstacles to humanitarian access;
5. Commit to respect and protect humanitarian personnel, their transport and goods against attacks, looting and other forms of violence, without interfering with humanitarian principles.



What is a durable solution?

IDPs will continue to have specific needs and potential vulnerabilities beyond the end of a conflict or disaster. The *IASC Framework on Durable Solutions for Internally*

Displaced Persons establishes that achieving durable solutions is a gradual process. This can be said to have taken place when IDPs “no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement.” Durable solutions can be achieved through:

- a. Sustainable reintegration in IDPs’ places of origin (return);
- b. Sustainable local integration in areas where IDPs have taken refuge (local integration); or
- c. Sustainable integration in another part of the country (settlement elsewhere).

Related questions



Should any of the durable solutions be prioritised?

Return, local integration, or settlement elsewhere are equally valid as options for IDPs. Human rights law gives them the right to choose freely between the three options as part of the rights to freedom of movement and choice of residence. This does not mean that a government cannot promote a particular option, as long as it leaves room for IDPs to choose one of the others. They should never be coerced into returning or into any other settlement option.



If IDPs return to their places of origin, does this mean they have found a durable solution?

IDPs cannot be said to have achieved a durable solution merely as a result of returning. Their sustainable (re)integration is required, any specific assistance or protection needs linked to their previous displacement must be resolved, and they must be able to exercise their rights without discrimination on account of their displacement.



Can the right to choose a durable solution be limited? For example, can return be prohibited?

The right to freedom of movement and to choose one’s place of residence means IDPs can choose to return to their places of origin or to live elsewhere in the country. Restricting the choice of settlement options is only possible in exceptional circumstances prescribed by law, in which it is absolutely necessary to protect the life, safety, health and integrity of those affected, or there is a similarly important and legitimate justification.



How can national authorities best support IDPs in achieving a durable solution?

National authorities are primarily responsible for supporting IDPs in their search for a durable solution. As such, they should ensure that all IDPs, including women, children and those with special needs, are:

- a. In a position to make an informed and voluntary decision about the settlement option they would like to pursue;
- b. Able to participate in the planning and management of their durable solution;
- c. Able to access equitable and relevant assistance and support services;
- d. Involved in peace processes and peace-building efforts where relevant.

Authorities should monitor and evaluate progress towards the achievement of durable solutions carefully so that obstacles can be identified and removed.



What criteria shape the extent to which durable solutions are achieved?

The following criteria determine IDPs' progress towards durable solutions:

- a. Long-term safety, security and freedom of movement;
- b. Enjoyment of an adequate standard of living without discrimination;
- c. Access to livelihoods and employment;
- d. Effective and accessible mechanisms to restore housing, land and property.

In many displacement contexts, the following criteria may also be relevant:

- a. Access to personal and other documentation without discrimination;
- b. Family reunification and the establishment of the fate and whereabouts of missing relatives;
- c. Participation in public affairs without discrimination;
- d. Access to effective remedies and justice.

The *IASC Framework on Durable Solutions for Internally Displaced Persons* provides further details on these criteria.

Framing the content

In a national instrument, law and policymakers may want to:

1. Explicitly recognise the primary responsibility of the national government to enable and support durable solutions;
2. Acknowledge that finding a durable solution is a gradual and often long-term process that is only achieved when IDPs no longer have specific assistance

and protection needs linked to their displacement and can enjoy their human rights without discrimination;

3. Commit to respect and protect IDPs' right to make an informed and voluntary decision about whether to return, integrate locally or settle elsewhere within the country;
4. Set out standards and criteria to support IDPs in the process of achieving a durable solution in line with the IASC Framework for Durable Solutions, and establish mechanisms to monitor and evaluate their progress;
5. Identify the relevant ministries, departments or units at the national and local level that have particular responsibilities for creating the conditions conducive to durable solutions, and clarify mechanisms for allocating necessary resources.

About IDMC

The Internal Displacement Monitoring Centre (IDMC) is a world leader in the monitoring and analysis of the causes, effects and responses to internal displacement. For the millions world-wide forced to flee within their own country as a consequence of conflict, generalised violence, human rights violations, and natural hazards, IDMC advocates for better responses to internally displaced people, while promoting respect for their human rights.

IDMC is part of the Norwegian Refugee Council (NRC).

Internal Displacement Monitoring Centre
Norwegian Refugee Council
Chemin de Balexert 7–9
CH-1219 Châtelaine (Geneva)
Tel: +41 22 799 0700, Fax: +41 22 799 0701

www.internal-displacement.org



facebook.com/InternalDisplacement



twitter.com/idmc_geneva

About the Project

The Brookings-LSE Project on Internal Displacement continues to be the leading voice promoting effective responses to internal displacement at the national, regional and international levels and supports the work of the United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons in carrying out the responsibilities of the mandate.

Brookings-LSE Project on
Internal Displacement
The Brookings Institution,
1775 Massachusetts Ave. NW
Washington, DC 20036
www.brookings.edu/idp