Obstacles to realising Guiding Principle 29 in Afghanistan

Megan Bradley

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Principle 29 asserts that: “Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.”

Making a reality of this aspiration in Afghanistan is complicated by complex patterns of displacement. In addition to 130,000 IDPs in ‘protracted’ displacement in the south and southwest, unknown numbers have been displaced in recent years due to conflict, human rights violations, floods and droughts. The five million refugees who have returned from Pakistan and Iran face a heightened risk of internal displacement, as they often lack the resources and power necessary to reclaim property, or simply have nothing to claim and nowhere to go.

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pastoral communities to special protection of their property but fails to provide clear guidance where traditional inheritance systems discriminate against women.

These complications notwithstanding, a great deal has been achieved. Ambitious restitution plans are under discussion for Colombia and Iraq. Experience of the 2004 tsunami and other natural disasters has led to increased awareness that property rights must be respected in the wake of all displacement. The promise of Principle 29(2) has yet to be completely fulfilled but it is encouraging that a rule that was once judged to be ambitious is fast becoming a routine part of the response to displacement.


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produced murky, overlapping claims as successive governments adopted different land policies, often with the goal of rewarding their supporters. Powerful elites have capitalised on the chaos to claim vast swathes of land. Afghanistan’s land registration system is largely dysfunctional. Many people lack documentation to back up their claims, while in other cases multiple people hold documents attesting to their ownership of the same piece of land. The courts cannot be relied upon to resolve disputes fairly because of lack of resources and training, and widespread corruption. When authorities do issue fair decisions, these are often not enforced, as law enforcement is extremely limited and impunity widespread. Claimants often resort to violence in order to settle disputes, perpetuating the cycle of displacement and grievance.

Principle 29 is reflected in the 2001 Decree on Dignified Return, which states that all moveable and immovable property shall be restored to its rightful owner. Similarly, the Afghan National Development Strategy “supports the right of all Afghans to return to their homes, [and] repossess property”. Despite these declarations, there are a massive number of unresolved land claims jeopardising the search for durable returns and sustainable peace. The international community’s ‘light footprint’ approach in Afghanistan means that, in contrast with restitution processes in countries such as Bosnia, there has been little support to build local capacity. A Special Property Disputes Resolution Court was set up but soon collapsed due to lack of support, inadequate enforcement capacity, inaccessibility and corruption.

In the absence of formal efforts to uphold displaced persons’ rights, IDPs and returnees largely rely on traditional decision-making and adjudication mechanisms such as shura and jirga to resolve their claims. In theory their decisions are based on sharia law but men who participate in them also follow customary laws which may be more conservative, particularly regarding women’s rights. Troubling as this is, working with the shura and jirga is essential to implementing Guiding Principle 29 in Afghanistan, even to a limited extent, as these bodies enjoy local legitimacy, issue prompt decisions and are less corrupt and more accessible than formal courts.

While greater stability is a pre-requisite for addressing land disputes in the south, it is essential to redouble efforts to tackle the land problem, for land disputes continue to trigger further conflict and displacement. Progress in upholding Guiding Principle 29 is key to preventing further internal displacement. The failure of the Special Court underlines the importance of abandoning one-size-fits-all approaches to redressing displaced persons’ land claims and instead crafting practical strategies that respond to local challenges. Until the Afghan government is stronger, creating new institutions will not be the answer. More effort is needed to explore how customary justice mechanisms might uphold displaced persons’ remedial rights, as recognised in Principle 29, without fatally compromising other rights, such as the equal treatment of women, that are recognised elsewhere in the Guiding Principles.