

TEN YEARS OF THE GUIDING PRINCIPLES

FMR – GP10

Obstacles to realising Guiding Principle 29 in Afghanistan

Megan Bradley

Restoring property to displaced Afghans is a formidable challenge. Given the prevalence of landlessness, overlapping claims and inequitable property distribution, focusing solely on restoring land to its 'original owners' is unlikely to meet the needs of IDPs, returnees and their neighbours.

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 Iran¹ 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.

Competition for land is intense in a country with a high birth rate where only 12% of land is arable. Decades of conflict and displacement have



IDP camp,
Kabul,
Afghanistan,
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IRIN/Marcocheir Deghrai

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,² which states that all moveable and immovable property shall be restored to its rightful owner. Similarly, the Afghan National Development Strategy³ “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.⁴

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.

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1. <http://www.unhcr.org/afghan.html>

2. <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=SUBSITES&id=3f5d990c4>

3. <http://www.and.s.gov.af>

4. Innovative Norwegian Refugee Council legal aid programmes have helped scores of IDPs to use *shura* and *jirga* to recover their property. See <http://www.nrc.no/>.

Guiding Principle 23

Every human being has the right to education ... To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.

Most IDPs consider education an essential factor in their children's development. “I don't need wealth but I do want education – I want there to be a future for our children,” asserts a Ugandan IDP. In Peru, some IDPs will not return home because of a lack of schools in areas of return, while in Mozambique returning IDPs left their children behind temporarily so they could continue their education. Schooling is seen also as a means of normalising their children's life and as a security measure, providing safety against sexual exploitation, military recruitment and being preyed upon by criminal gangs.

Yet IDP parents in Georgia and Colombia point to lack of school supplies, proper clothing and shoes as factors preventing their children from attending school, while in Indonesia high tuition fees pose problems. In Sri Lanka, parents complain

about safety and transportation problems because there is no school nearby: “Our children have to walk more than 6 km or have to hire an auto. We don't have enough bus services. Because of that our girls can't continue their education.”

In Juba, southern Sudan, parents lament that “Some go to school, whose parents can afford, but most cannot.” Other barriers to schooling include damaged school buildings and supplies, untrained teachers, unfamiliar languages, loss of necessary documents for entry to school, and inability to meet residency requirements.

In several countries IDPs report discrimination against their children. In Sudan, southern Sudanese IDPs complain of religious and racial discrimination. A young IDP man who had gone to school in Khartoum says that “We learned Islamic doctrines in Khartoum by force.” A boy in Colombia had been told by his teacher: “No wonder you are so stupid – you are a displaced.”

Interviews carried out by the Brookings-Bern Project on Internal Displacement. See Brookings-Bern Project report ‘Listening to the Voices of the Displaced: Lesson Learned’ at http://www.brookings.edu/reports/2008/09_internal_displacement_cohen.aspx