

Gaps in IDP protection

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Gaps in protection still remain for those people displaced by climate change within their own countries.

The normative framework for people displaced by the effects of climate change inside their own country is better developed than that for people displaced outside their country. Many of the former are IDPs and their rights protected by human rights law and international humanitarian law as articulated in the Guiding Principles on Internal Displacement,¹ whereas few of the latter qualify for refugee status and international law does not currently protect their status in other countries.

While a priority is therefore to define the rights of people displaced outside their country by the effects of climate change, the prospect of growing numbers of people displaced internally should also be a catalyst to address gaps and implementation challenges in the normative framework that applies to them. The rights of the majority of the 25 million people already internally displaced by conflict and the many millions more displaced by natural disasters and development projects are currently poorly protected. The effects of climate change will inevitably increase their number and further test protection in law and practice.

Some of those moving as a result of the effects of climate change – for example, as a result of a general deterioration in living conditions because of regular flooding – will challenge the current distinction between voluntary and forced migration and may find themselves without protection. And in contrast to those displaced by conflict, many of those displaced by the consequences of climate change may never be able to return home because their places of origin have been destroyed or inundated. New approaches to durable solutions will be needed.

This may be the time to engage – or in some cases re-engage – in some

of the debates surrounding the protection of the rights of IDPs.

One debate concerns the definition of internally displaced persons, a descriptive rather than legal definition provided in the Guiding Principles. Some commentators have argued that the description is too broad to be operational, covering as it does a wide spectrum of causes of internal displacement including conflict, natural disasters and development projects. On the other hand, the effects of climate change may result in internal displacement that does not clearly fit even this broad definition – for example, those moving pre-emptively or whose movement is triggered by economic factors. While these people would be protected by human rights law, the Guiding Principles would not apply. Is it appropriate to distinguish them from other internally displaced persons? Is there reason to suppose that they will be any less vulnerable than other IDPs?

Even though the laws and norms articulated in the Guiding Principles are derived from binding conventions, treaties and agreements, the Guiding Principles themselves are not binding. A second debate which may be worth revisiting is whether it is time to negotiate a binding convention. There are sound reasons not to. Negotiating a convention is a time-consuming process; there is unlikely to be significant consensus around a convention that ultimately concerns an issue of state sovereignty; even binding conventions sometimes have little impact in reality; and the Guiding Principles are increasingly being incorporated into national laws and policies, despite their non-binding character. At the same time, a draft AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa may signal a new direction, at least at the regional level. Not

only would it be binding upon signatories but it also increases the scope of the protection found in the Guiding Principles (for example, to include persons displaced as a result of a lack of development) and provides the AU with the right to intervene in member states in order to protect displaced persons.

While the development of a raft of national laws and policies addressing internal displacement is an important step, there still remains an implementation gap, in most cases because of a lack of capacity and in some notorious situations because of a lack of political will. How to plug this implementation gap remains an important debate to resolve. Once again, displacement caused by climate change may extend this implementation gap. For example, while it may be possible to plan for and mitigate the effects of slow-onset hazards associated with climate change, it is much harder to predict and prevent the effects of rapid-onset hazards.

Finally, perhaps the fundamental debate that underlies the protection of IDPs today and in the future is how to realise in practice the responsibility to protect. The tremendous and unnecessary suffering that resulted from the reluctance of the Burmese government to cooperate and the unwillingness of the international community to intervene after Cyclone Nargis is a clear reminder of the political challenges that need to be overcome to protect the rights of the internally displaced, whatever the cause of their displacement.

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1. Guiding Principles online at www.brookings.edu/projects/idp/gp_page.aspx