

Domesticating the Guiding Principles in Afghanistan

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Over the past 20 years, many governments have developed legal and policy instruments to help incorporate the Guiding Principles into national legislation or policy frameworks. Achieving effective, meaningful implementation, however, is hard, as Afghanistan shows.

The 2013 National Policy on Internally Displaced Persons (IDPs) in Afghanistan was intended to help strengthen the national response to the growing number of IDPs across Afghanistan.¹ The objective was for the new policy to become the point of reference for international and national stakeholders in order to fully integrate displaced people into national priority programmes and internationally supported development plans, as well as to instil a sense of national responsibility and accountability among authorities.

The process of developing a national instrument started in February 2012 following international press coverage of the tragic deaths of IDP children in the informal IDP settlements in Kabul due to cold winter weather. This prompted President Hamid Karzai and the Afghan Cabinet of Ministers to

task the Minister of Refugees and Repatriation (MoRR) with developing a comprehensive national policy on internal displacement. A two-day consultative workshop was held in Kabul in July 2012, attended by key government officials, policymakers, non-governmental organisations (NGOs), members of the IDP population, and the UN Special Rapporteur on the human rights of internally displaced persons.

Key to the policy process was to build a clearer understanding of the needs of IDPs. Evidence collected as part of a major country-wide study on IDP protection² showed that IDPs were faring worse than returning refugees or host communities; they were marginalised in their communities, lacked access to land and housing, lived in more precarious housing conditions, showed higher levels of food insecurity

and tended to have less access to services. Survey after survey reiterated that IDPs wanted local integration – but the authorities' response focused on return.

Failure of implementation

From the outset, the level of ownership of the policy was diminished somewhat by not having Afghan stakeholders leading the drafting process (the drafting was led by a protection specialist seconded to the UN Refugee Agency (UNHCR) and MoRR). After a series of country-wide consultative workshops, a policy was drafted within six months, adopted in November 2013 and launched in February 2014. Implementation was due to start in September 2014.

Recognising that solutions would be local as well as national, primary responsibility for drafting implementation plans was given to provincial governors, leaving the national-level MoRR in charge of pulling these provincial plans into one national implementation plan. The 'rollout' of the policy was intended to take place in 2015 in four pilot provinces: Nangarhar (east), Herat (west), Balkh (north) and Kabul (central).

Although workshops were held in Nangarhar and Kandahar in 2014, the rollout was mostly nominal. One of the key aspects of the Nangarhar workshop was the commitment of all stakeholders to the need for trainings on the content of the IDP policy, information to be shared with IDP communities on their rights, a greater engagement with civil society, and a monitoring of the policy implementation alongside a transparent process for funds disbursement. Only the first of these commitments – to provide training – was upheld (through initiatives by international NGOs such as Welthungerhilfe and the Norwegian Refugee Council).

It has since become clear that the design of the provincial plans never progressed further than the first two pilot provinces. Nangarhar (in 2014–15) and Herat (in 2016) were the first to develop provincial action plans (PAPs), and they were also two of the provincial governments more willing to consider local integration as part of their IDP response

plans. The Herat PAP led to the creation of an inter-agency Durable Solutions Initiative with the purpose of facilitating durable solutions and the implementation of the PAPs. The situation in Nangarhar was complicated by the mass of returns from Pakistan from 2015 onwards, which led to a shift in operational focus to assisting returnees (many of whom would, in fact, themselves become secondarily displaced, or 'returnee-IDPs').

Legal and policy challenges

Afghanistan's IDP policy now runs the risk of being shelved. Much of the practice around IDP response is being taken in new directions – not necessarily aligned with the policy, though also not necessarily in contradiction of it. This includes the registration process and a new national framework.

While the IDP policy called for the establishment of a consolidated information management system, it did not provide for a nationwide system of IDP registration, instead delegating identification and verification of IDPs to the provincial directorates of refugees and repatriation (DoRRs). However, a new 'petition system' has been introduced as the main system for the registration of IDPs and provision of humanitarian assistance. Feedback from users has not been positive.³ Firstly, it is restricted to government-controlled areas only. Secondly, DoRR offices require IDPs to visit in person to submit a petition, and do not accept beneficiary lists from organisations, thereby precluding access to those unable to travel to register. Thirdly, long-term IDPs and those displaced multiple times are excluded from applying, as applicants are only allowed to make one petition even if their needs persist or they move to a new province. Information is lacking, the cost of the process is prohibitive for many, and access by the most vulnerable groups is impeded.

In April 2018, the humanitarian community began taking welcome steps towards establishing standard operating procedures, under the leadership of the UN Office for the Coordination of Humanitarian Affairs (OCHA), to reduce humanitarian agencies' reliance on the

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Kamarkala IDP settlement on the outskirts of Herat city, Afghanistan.

government-led IDP petition system. The role of the international community in establishing an alert system and a simplified coordination approach led by OCHA, however, calls into question the notion of national ownership. A recent workshop at the Afghan National Disaster Management Agency (ANDMA) was derailed due to discussions on the petition system, reflecting tensions within national institutions.

While the National Policy on IDPs called for responsibilities to be split between MoRR and ANDMA, Afghanistan's National Unity Government, which was formed in 2014, replaced these plans with a revised structure for dealing with displacement, and a new policy framework encompassing returnees and IDPs. After the political and constitutional tensions resulting from the establishment of the National Unity Government, however, the IDP policy was no longer considered a matter of national priority. The Displacement and Returnees Executive Committee (DiREC) is the inter-ministerial group responsible for implementing the framework. It has taken important steps to finalise and obtain approval on a new Land Decree (Presidential Decree 305), seen as a vital instrument for supporting reintegration of refugee and IDP returnees. However, Presidential Decree 305 will face obstacles to implementation similar

to those that faced the National IDP Policy. Operationalising the decree could become just as challenging as operationalising the National IDP Policy has proven to be.

Coordination and cooperation between the appropriate ministries, government agencies and provincial actors have been major challenges for the National Policy on IDPs. Numerous international actors, supported by donors, have worked to build awareness and understanding, with trainings and workshops conducted at different levels of government. Yet these efforts have not been accompanied and reinforced by political will. Weak institutions and lack of financial resources and technical capacity have meant that leaders were never found to uphold the responsibilities outlined in the policy.

Conclusions and recommendations

In many respects, the stakeholders involved in bringing Afghanistan's National Policy on IDPs to fruition followed the process exactly as it was intended – building national support, establishing a consultation process to help ensure government ownership, providing technical support to MoRR, sensitising other government agencies, and communicating the policy at sub-national levels. But ultimately no implementation has taken place and, for this reason, Afghanistan helps to illustrate where the challenges lie in giving meaningful

effect to IDP laws and policy. A few actions could perhaps have changed this outcome.

Firstly, the mandate of the Special Rapporteur on the human rights of internally displaced persons⁴ should have been strengthened to provide more dedicated and nationally focused capacity support to IDP law and policy making. Beyond the initial policy drafting, there remains remarkably little dedicated international institutional support for countries who are seeking to integrate complex new policies into national and sub-national response plans or to legislate for certain rights and protections for IDPs. The office of the Special Rapporteur could play a vital role in overseeing this, particularly in looking at what implementation support is required on the ground and in monitoring progress against agreed benchmarks.

Secondly, more national support should have been generated from the outset by involving civil society organisations (CSOs). Beyond some representatives of IDP communities, Afghan civil society was neither adequately briefed on nor sufficiently involved in this process – meaning that the perception that the IDP policy was imposed by the international community was to a large extent unavoidable. Involving CSOs and local NGOs could also potentially have paid dividends in terms of overcoming obstacles to access. National civil society can also play an important role in monitoring and evaluating the implementation of national instruments on IDPs and in undertaking advocacy with relevant government counterparts.

Thirdly, longer-term funding commitments are needed if meaningful national capacity is to be built to a level where it can give effect to expressed commitments. Capacity building cannot be limited to one-off sensitisation workshops and/or trainings. There needs rather to be a specific programme of dedicated implementation support for the lead government ministry for internal displacement (in the case of Afghanistan, MoRR).

Looking to the future

In 2018, 20 years after the launch of the Guiding Principles and four years after the

launch of Afghanistan's National Policy on IDPs, Afghanistan's IDPs still lack basic awareness of their rights and entitlements and the remedies available to them. Surveys indicate a yawning gap between the 70% who identify their right to food and water, and the 7% who identify their right to vote.⁵ Some IDPs, including women, remain highly vulnerable and often lack access to specialist support. IDP families who do not receive aid are resorting to harmful coping strategies such as child labour and early marriage. At the same time, conflict and violence are displacing more and more Afghans, and a growing number of returning refugees are joining the ranks of the internally displaced. Durable solutions remain elusive for the vast majority of Afghanistan's IDPs, who are caught between political turmoil and growing insecurity.

It is crucial, therefore, that steps are taken to ensure that IDP protection and support, particularly in the area of law and policy making, remain high on the agenda both of the international community and of national government. Afghanistan's National Policy on IDPs can serve to provide important guidance to national authorities and other relevant parties involved in responding. It can also act as an important tool for safeguarding IDPs' rights, as set out in the Guiding Principles. For a process initiated, as is so often the case, by the international community, it needs to be implemented nationally if it is to succeed.

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1. Estimates vary but it is generally thought that at least 650,000 Afghans were displaced in 2016 alone due to conflict.
2. Samuel Hall/NRC/Internal Displacement Monitoring Centre (2012) *Challenges of IDP Protection: Research study on the protection of internally displaced persons in Afghanistan* bit.ly/IDP-protection-Afgh-2012
3. Samuel Hall/NRC/IDMC (2018) *Escaping war: Where to next?* bit.ly/EscapingWar-2018
4. bit.ly/OHCHR-IDPs
5. See endnote 3.