

National legislation

by Christophe Beau

Few states in the world have a special protection regime for IDPs offering a specific legal status to assist victims of displacement.

Such IDP status, though not required under international law, nonetheless can provide people with social, economic and legal benefits to safeguard rights endangered by displacement.

Six out of eleven European countries affected by conflict and internal displacement have adopted specific laws defining a special status for IDPs: Azerbaijan, Bosnia and Herzegovina, Croatia, Cyprus, Georgia and the Russian Federation. Elsewhere in the world, Colombia is the most notable case.¹

Durable solutions end displacement

Most national laws instituting a status for IDPs provide for the termination of this status after a person has found a solution to their displacement.

National legislation most in line with standards set out in the Guiding Principles can be found in Bosnia and Herzegovina, where the law relating to the status of refugees and displaced persons, drafted in cooperation with UNHCR, refers to both return and resettlement as durable solutions ending the status granted to IDPs. The

Bosnian law clearly states that these solutions must correspond to a voluntary choice made by the person concerned, with return and resettlement implemented under conditions of safety and dignity.

Clearly all the details of conditions to be satisfied by the processes of return and resettlement cannot be included in the law but instead could be elaborated in decrees or administrative instructions. However, the law should at least define return and resettlement in a way that makes solutions durable and refers to the essential standards of safety, dignity and freedom of choice. In practice, these solutions tend to be described in very imprecise terms. In Croatia, the law declares return to place of original residence as a sufficient condition for

the cessation of IDP status, reducing the return process to a mere change of address. In Georgia, registration as a permanent resident in a new municipality is seen as de facto resettlement and sufficient grounds to end IDP status. Colombian law stipulates that IDP status ceases with a person's "social-economic consolidation and stabilization" without mentioning safety as a requirement.

National laws may also confer decisive weight on housing as a determining factor. In Azerbaijan and the Russian Federation, resettlement is seen as completed once IDPs can access permanent housing. These national laws rightly highlight housing as an essential element to the safety of displaced persons when searching for durable solutions but risk diverting attention from other vital social, economic, legal and security needs.

Free choice manipulated

Whereas the Guiding Principles highlight the fact that durable solutions should be based on a voluntary decision made by displaced persons, national legislation is often designed to influence this decision. For example, legislation in Azerbaijan provides for resettlement only when return is impossible and after a special decision made by authorities, revealing official preference for the solution of return to original homes. Similarly, in Georgia, the law deters IDPs from resettling permanently elsewhere in the country, withdrawing their special status and the meagre social rights attached to it as soon as they register as permanent residents in a municipality outside their area of origin.

Although Guiding Principle 28 specifies that the authorities' responsibility is to create conditions for both return and resettlement, emphasis in some national legislation on one solution above others may be legitimate if it helps to restore real freedom of choice. In Bosnia and Herzegovina, the law specifies as an aim the creation of



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conditions conducive to return (omitting resettlement), in order to counter local opposition to minority returns. There is a very fine line, however, between creating conditions for restoring real freedom of choice and manipulating IDPs' intentions.

The political exploitation of IDPs' will to return is most obvious in countries facing challenges to their sovereignty from occupation or secession. By artificially prolonging IDP status in order to keep the displacement problem as visible as possible, countries like Georgia and Azerbaijan promote their claims over the occupied territories. By deterring displaced persons from opting for any solution other than return, as long as sovereignty has not been restored in the lost territory, these states maintain IDPs in precarious social conditions, discouraged from rebuilding a new life outside their areas of origin.

Also demonstrating the reluctance of the government to consider the displacement crisis ended while the country is still divided, Cypriot law makes no provision to end the special status granted to persons displaced from the Turkish-controlled part of island. On the contrary, the law extends IDP status to children of male displaced persons, thereby artificially conferring the IDP status to persons who have not necessarily experienced displacement themselves or have already resettled durably in the government-held area. However, unlike

Georgia and Azerbaijan, the Cypriot state has spared no efforts in helping the displaced persons to reconstruct a new life away from their homes, in particular through an extensive housing policy.

Displacement ended arbitrarily?

Various examples of national legislation end IDP status based on a presumption that people have found a solution or that special assistance is no longer needed. In some cases, IDP status and assistance can be terminated after a specified period of time. In Bosnia and Herzegovina, 'returnee' status is limited to a period of six months. In the Russian Federation, 'forced migrant' status ends after five years but can be extended if a permanent place of residence has not been found. Legislation in Bosnia and Herzegovina, Colombia and Croatia can also end IDP status if a person refuses state assistance or a specific solution offered. Here the state presumes the displaced person has already found a response to their needs or has opted for another solution. In Croatian and Georgian laws, the end of displacement is also presumed when the circumstances that caused displacement have ceased or when state authorities declare this to be the case.

Presumption-based criteria for ending IDP status bypass the express will of

IDPs in Bilasovar 5 camp, Aghjabedi District, Azerbaijan

the displaced as they assume that all conditions for a free choice are fulfilled and that the IDPs are seeking to extend their status beyond what is necessary. Such provisions open the door to many abuses, allowing a state to prematurely discharge itself from responsibilities before the process of return or resettlement is complete. Another risk is that authorities declare the end of displacement on a discriminatory basis, with no guarantee that assessment of conditions in the areas of return or resettlement will be done fairly. Bosnian law provides clear guidance as to limitations of presumption in specific cases; persons who experienced serious trauma in their areas of origin should not be presumed to have found a solution if they decide not to return, even when adequate conditions of safety and dignity exist in the area of origin.

Some states have discriminatory provisions to end displacement, in overt contradiction to the Guiding Principles. In Croatia, IDP status can be ended if a displaced person fails to fulfill 'household tasks' in state-allocated shelters. Such provisions create a special regime of sanctions for IDPs, in violation of Guiding Principle 1 on non-discrimination. In a decision released on 21 November 2002, the Constitutional Court of the Russian Federation annulled a provision of the 1995 'forced migrant' law, according to which forced migrant status could be ended following conviction for a "serious" crime. The Court argued that the withdrawal of forced migrant status was an addition-

tional punishment for the same crime, thereby infringing the right of forced migrants to equality before law. The Court also noted that such withdrawal was not provided for in criminal law.

The Guiding Principles define IDPs as permanent residents who have not crossed an internationally recognised border. IDP status can therefore be withdrawn if the displaced person leaves the country and becomes permanently resident in another country. This provision can be found in the Georgian legislation and in the 'forced migrant' law of the Russian Federation. However, Georgian legislation, which restricts the benefits of IDP status to Georgian nationals and stateless persons, ends national IDP status when the displaced person acquires the citizenship of another country, even if this person does not leave the Georgian territory.

Good practice

In the author's view, IDP status should end when people no longer need special attention as a result of displacement. The end of displacement should be defined in national law to coincide with durable solutions as defined in the UN Guiding Principles on Internal Displacement - voluntary return, local integration or resettlement elsewhere in the country. Such solutions should always be **voluntary**, and carried out in conditions of **safety and dignity**.

Some states do recognise the problems with ending IDP status prematurely. The constitutional court of Colombia, in its decision of 16 March 2001, highlighted that in some cases the real 'situation'

of a displaced person on the ground may not correspond to their legal 'condition', especially if their IDP status is arbitrarily terminated. With the Guiding Principles, states now have an instrument to guide legal practice on ending displacement based on durable solutions and internationally recognised standards.

The Guiding Principles do not provide detailed or definitive answers to when the state can legitimately end its assistance to IDPs. The Principles, however, do allow an assessment of whether state policy to end IDP status infringes key principles of protection, such as non-discrimination, safety and freedom of choice. One way to ensure consideration of the Principles is for legislators to make specific references to them when preparing national laws to end displacement.

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1. Legislation, and references, can be obtained from the Global IDP Project: www.idpproject.org/

Law on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina, Official Gazette, 23 December 1999

Article 7

The status of a displaced person shall cease if a person:

- a) voluntarily returns to his/her former habitual residence;
- b) refuses to return to his/her former habitual residence, although voluntary return to the place of his/her former habitual residence, in safety and with dignity, is possible, and if there are no compelling reasons arising out of previous persecution or other strong humanitarian reasons;
- c) takes up, in safety and dignity, permanent residence elsewhere in the place of his/her voluntary choice;
- d) and if there are other reasons regulated by Entity laws.

[Unofficial translation]

IDP in Baku,
Azerbaijan

