

Afghanistan consults on an IDP policy

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A recent commitment announced by the Government of Afghanistan to develop a national policy on internal displacement is timely. If carried out well in the lead-up to transition, it will help the government to better protect and meet the needs of internally displaced communities across the country.

Internal displacement is such a widespread and longstanding phenomenon in Afghanistan that according to the ICRC over 76% of the Afghan population has experienced displacement. As of the end of June 2012, the number of IDPs reported in Afghanistan was estimated at over 400,000 individuals — a conservative figure that does not capture all those displaced by natural disasters, IDPs scattered in urban areas and IDPs who cannot be assessed for security reasons or because of lack of access; actual numbers are recognised to be significantly higher. The IDP population in Afghanistan is also known to be growing significantly, reflecting the ongoing rise in insecurity across large swathes of the country. As Afghanistan enters the final stages of planning for the transition due to be complete by 2014, with an accompanying withdrawal of international military forces, uncertainty over political, social and economic impacts of the transition is likely to trigger further internal displacement, particularly if security conditions do not improve in the short term.

As new research by the Norwegian Refugee Council (NRC) and its Internal Displacement Monitoring Centre (IDMC) confirms,¹ IDPs constitute one of the most vulnerable groups in Afghan society, with many slipping

out of the response net of the Afghan government and the international community owing to the multitude of complex barriers preventing response and the achievement of durable solutions. This was illustrated most starkly during the 2011/12 winter crisis, in which the deaths of at least a hundred infants and children in Kabul's informal IDP settlements provoked widespread media attention. These highly visible urban IDP families, living on the doorstep of the international aid community, received aid and attention too late and prompted national and international actors alike to evaluate urgently how to achieve improved protection for Afghanistan's IDPs and ensure that they receive better assistance.

To date, the government's response has been limited by its opposition to local integration or settlement elsewhere and by its reluctance to recognise some groups of IDPs, particularly those living in urban settings. In adopting policies which deny IDPs access to assistance in their place of refuge, there has been a collective failure to protect their rights as set out in the Guiding Principles on Internal Displacement.² At the same time, most analysts agree that the decentralised nature of the Afghan state makes it difficult for the government to assist IDPs in rural or remote areas of the



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As winter sets in, IDPs huddle around a small fire at a camp in the Dera Ismail Khan district, Afghanistan.

country, let alone facilitate durable solutions for them. Coupled with ongoing challenges in profiling IDPs across Afghanistan owing to a security environment in which many government and humanitarian actors have limited access, the national and international response to internal displacement falls well below the standards embodied in the Guiding Principles, leaving thousands of the most destitute unassisted and unprotected.

National IDP instruments

As part of the government's commitment to develop a national policy on internal displacement, the Ministry of Refugees and Repatriation (MoRR) has initiated a policy process with the objective of achieving a national instrument that ensures protection of and assistance to IDPs throughout all stages of displacement and in all parts of Afghanistan. Importantly, the Ministry has stated its intention to draft a comprehensive policy that acknowledges and reflects the primary role and responsibility of the Government of Afghanistan to prevent displacement, to assist and protect all IDPs during displacement and to help find appropriate durable solutions. Underpinning these commitments are accompanying objectives to ensure the Ministry acquires the requisite institutional capacity to oversee improved IDP coordination and response mechanisms at the national and provincial level.

As experience shows, national policies on internal displacement can act as useful tools for governments to safeguard the rights of IDPs. They can ensure that better planning helps both to prevent further displacement and to respond to those already displaced. In Colombia for example, before IDP-specific legislation was first adopted in 1997 the Government of Colombia responded to forced displacement in an ad hoc and ineffective manner. Overall, the problem was given an extremely low priority and accorded little visibility within the Colombian public sphere. Despite some failings in the implementation of Colombia's law No. 387 of 1997, it was a milestone as it brought the necessary attention to the problem of internal displacement in Colombia, acknowledged the specific assistance and protection needs of IDPs, introduced a stable framework for protection by acknowledging the importance of a rights-based approach to the displacement response and established a national institutional set-up charged with the responsibility to assist and protect IDPs.

National instruments are also important tools for governments seeking to facilitate cooperation across government and externally with other national and international actors. In Afghanistan, where the international humanitarian and development actors frequently struggle to align efforts in supporting IDPs, the existence of a national instrument on internal displacement offers the MoRR an important means to promote effective cooperation with these actors and to support coordination among them. Perhaps most importantly for Afghanistan, a national instrument provides an opportunity for the government to help ensure the IDP response is tailor-made to the particularities of the displacement context in Afghanistan, and therefore for a more rational and effective allocation and use of resources.

National ownership and consultation

That the Government of Afghanistan has strongly indicated its desire to develop an IDP policy and requested international support to achieve this goal is a welcome step. Yet, as so often in Afghanistan, the gap between policy and practice usually hinges upon the process by which the policy is arrived at. A two-day national consultative workshop (14-15 July 2012) hosted by the MoRR in the capital, Kabul, on the development of a national IDP policy was a promising indicator of the government's commitment towards a nationally owned policy process. It was also a recognition of ensuring a consultative process through which the content of the Afghan IDP policy is determined, particularly one that puts the displaced people at the core of the process and listens to their voices. The UN Special Rapporteur on the human rights of internally displaced persons, Dr Chaloka Beyani, also underlined in his statement at the workshop the imperative of strong national ownership and meaningful consultations.



National IDP policy development workshop.

National governments wishing to address internal displacement through a policy framework face significant obstacles both in developing and implementing such policies. Inevitably, the dynamics and impacts of displacement vary widely across the country, between urban and rural settings and within provinces. Without pursuing meaningful and inclusive consultation of all actors at the provincial and district level, it will not be possible to determine the scope of the envisaged instrument nor the core issues such an instrument will be required to address; these may differ considerably in different areas. In Afghanistan, these will be difficult consultations to carry out owing to the disparate views of national authorities with regard to defining IDPs, the blurred lines between migration and displacement, the high volume of returning refugees unable to settle in their places of origin, the scarcity of viable land and the challenges of land allocation procedures, and the reduced options for durable solutions at a time of still ongoing insecurity.

These issues resonated strongly for many of the participants at the July 2012 workshop in Kabul, where

the principle of national responsibility and ownership was frequently highlighted as a prerequisite for the development, drafting and implementation of any future IDP policy. It was recognised that consensus on these issues will be an important benchmark for the MoRR to measure its progress against in developing the policy. In order to achieve this consensus, transparent consultation will have to extend beyond just national, provincial and municipal authorities to include IDP and host communities themselves, as well as national civil society and international humanitarian and development actors, including donors.

To arrive at a policy that is considered to be relevant and has strong buy-in from all stakeholders, its elaboration will also have to be nationally led. It is clear from previous experience that too strong an international footprint in policy development will lead quickly to a deterioration of national ownership and result in a policy that will struggle for effective implementation. National ownership of the IDP policy must be sustained throughout the process. In order to strengthen national ownership it needs to be ensured that all relevant Ministries and the Government of Afghanistan itself buy into the process.

Critical steps

As the MoRR takes forward this national IDP policy process there are a number of critical steps which will determine both the quality of the national instrument that comes out of it and also its longer-term viability during its implementation.

A genuinely consultative process: The development of the IDP policy should be nationally led and driven by the consultations with a broad variety of stakeholders. To be inclusive and transparent, the process must be premised on wide consultations at the national, provincial and municipality levels. Without such broad-based consultations the policy will lack legitimacy, relevance and accountability. At the July 2012 stakeholder workshop on the process, the momentum for such a consultative process was created. In order to maintain this momentum, a leaflet on the process and the government's commitment to an inclusive and transparent process could be produced and disseminated widely to increase interest in Afghanistan in the IDP policy process.

Establishing capacities: The MoRR will lead the IDP policy process. In order to broaden national ownership of the policy process and to hold meaningful consultations, the Ministry needs to be given the requisite capacity. It also needs to be supported by national and international stakeholders through the establishment of light institutions, such as a secretariat, an inter-ministerial consultative committee or a well-composed advisory committee.

Safeguarding the government's primary responsibility: While other national and international actors might offer technical facilitation in support of the MoRR, such support must not tend to take away from the government its primary responsibility to develop this IDP policy, as law- and policymaking are inherently sovereign tasks.



National IDP policy development workshop.

Consultation needs, plans and mechanisms: For reasons of transparency and accountability, the lead Ministry should establish plans and mechanisms indicating the consultation needs and an approximate timeline. In particular, such consultative mechanisms should provide adequately for feedback for provincial and municipality-level actors. These must include, in addition to authorities at the different levels, national civil society, international humanitarian and development organisations and actors, including donors, relevant private sector entities and, last but not least, displacement-affected and displaced communities.

IDP voices: IDPs must be placed at the heart of the process with views of other displacement-affected communities – in particular host communities – also considered. This should ensure that the policy reflects the various realities of displacement in provinces across Afghanistan.

Building a knowledge base: An IDP policy should reflect the realities and thus relies on the availability of knowledge. A proper assessment of gaps in knowledge is critical so that targeted research can be commissioned. The government should also consider a new profiling of the displacement situation in Afghanistan to reveal important information on the numbers and the locations of IDPs, on the different causes of displacement in Afghanistan, patterns of displacement, on protection concerns and humanitarian needs as well as prospects for durable solutions. Experience from other policymaking processes show that a profiling can be critical in informing the policy process.

Building on existing activities: The absence of an IDP policy in Afghanistan does not mean that there are no existing efforts to assist and protect IDPs across the country. In developing an IDP policy, it will be critical to build upon a mapping of relevant stakeholders and their activities.

Dealing with anti-government groups: Afghanistan's realities also call for a pragmatic approach in establishing a formal consultation line with anti-government entities which control territory where IDPs have fled to or settled. A national policy that leaves out these IDPs would send out the wrong signal regarding

the government's primary responsibility to assist and protect all IDPs across Afghanistan. In any case, the Guiding Principles on Internal Displacement also call for observance by such groups.³

Safeguarding humanitarian access and space: Particular attention must be paid to the issues of humanitarian access for actors seeking to meet the emergency needs of IDPs living in areas where the government is not able to respond and of the preservation of humanitarian space.

All these steps will help the Government of Afghanistan to better protect and meet the needs of internally displaced communities across Afghanistan.

National policies internationally

With an IDP policy, Afghanistan would join the ranks of some 20-30 other states that have or are developing national instruments on IDPs. For example, Central African Republic and Nigeria are currently also developing their national IDP instruments, and Kenya's IDP bill and policy are actually ready for adoption and implementation. A positive policy experience in Afghanistan may also create interest in other displacement-affected states in the region.

The trend for more and more countries to embark on processes to develop their national IDP policy or law

is encouraging. In support of national authorities, the Norwegian Refugee Council's Internal Displacement Monitoring Centre together with the Brookings-LSE Project on Internal Displacement has developed a guide for practitioners on national law and policymaking that is currently being piloted in Afghanistan. This guide complements the 2008 Manual for Law and Policymakers⁴ and explains in practical steps consultative processes leading to national laws and policies. Once reviewed, this practitioner's guide will serve other governments in developing their national laws and policies on internal displacement. As the former Representative of the UN Secretary-General on the human rights of IDPs, Walter Kälin, pointed out: "Law matters. It is not the solution but it matters. Ordinary national legislation makes a lot of sense in normal circumstances, but not in times of humanitarian crisis involving internal displacement."

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1. NRC/IDMC/JIPS/Samuel Hall Consulting, IDP Protection Study, publication forthcoming September 2012.
2. www.idpguidingprinciples.org
3. Principle 2 (1).
4. www.brookings.edu/about/projects/idp/resources/manuals

Resources

Developing national instruments on internal displacement:

A guide for practitioners

Pilot version – February 2012 (Norwegian Refugee Council/Internal Displacement Monitoring Centre)

Protecting Internally Displaced Persons:

A manual for law and policymakers

October 2008 (Brookings-LSE Project on Internal Displacement). Online at www.brookings.edu/about/projects/idp/resources/manuals

NRC/IDMC's *Developing national instruments on internal displacement:*

A guide for practitioners is currently being piloted in Afghanistan (and will eventually be available online at www.internal-displacement.org/publications).

This Guide provides advice to national authorities and other actors on how to develop a national instrument on internal displacement, plus guidance through the different stages and steps of the process. It takes into account regional particularities and differences in the legal framework where applicable and assists in overcoming typical difficulties in domesticating regional and international standards. The Guide complements the 2008 *Manual for law and policymakers*. While the Manual focuses on the substance of national instruments on internal displacement and is addressed to those who actually draft national instruments, the Guide assists national authorities and other actors in the process of developing a national instrument addressing internal



displacement in their country. As such, a combined use of both instruments will help implement the international obligations of governments towards IDPs.

The Guiding Principles on Internal Displacement identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement and reintegration. Although they do not constitute a binding instrument, the Principles reflect and are consistent with international law. The Guiding Principles have been translated into over 50 languages – see www.brookings.edu/about/projects/idp/gp-page

The Pashtu version is at www.brookings.edu/~media/Projects/idp/GP_Pashtu.PDF

Key IDP documents can be found at www.internal-displacement.org/publications and at www.brookings.edu/about/projects/idp/resources

Forced Migration Review includes articles about internal displacement in every issue and has produced several issues (in English, French, Spanish and Arabic) focusing specifically on internal displacement, including:

Ten Years of the Guiding Principles on Internal Displacement
www.fmreview.org/GuidingPrinciples10

When does internal displacement end?
www.fmreview.org/when-does-internal-displacement-end

