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Implementing the Guiding Principles at the domestic level

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Implementing the Guiding Principles at the domestic level

Abstract

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Implementing the Guiding Principles at the domestic level

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Examples from a number of States who have successfully implemented their own IDP laws and policies reveal several factors that can assist effective implementation.

As of mid-2017, 40 States which have experienced internal displacement had introduced some 69 domestic legislative instruments and policies (omitting minor policies and amendments).¹ Across these laws and policies there is clear acceptance that internally displaced persons (IDPs) require some form of international protection. However, only 30 laws and policies explicitly mention the Guiding Principles, and only 19 explicitly endorse the IDP definition that the Guiding Principles contain. Concerns have long been raised around how successful the introduction of

laws and policies on internal displacement has been at the domestic level, and the implementation picture remains mixed.²

Fewer than a third of laws and policies have been implemented without significant difficulties.³ Thus, for example, while Yemen's 2013 national policy for addressing internal displacement references the Guiding Principles and includes clear protection goals, a lack of government capacity – in the face of the ongoing civil war – has meant the government can do little to implement it beyond facilitating the work of international humanitarian actors.

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Eleven of the laws or policies have never been implemented at all, either remaining in draft form for years (like the Government of the Democratic Republic of Congo's draft IDP law of 2014, which is stalled at the review stage) or simply reflecting aspirational claims which a government was unable or unwilling to follow. In Nepal, for example, strong initial commitments by the government following the 2006 ceasefire led to the introduction of an IDP policy hailed as comprehensive by the international community. However, it has never been formally approved by the Nepalese Cabinet who, it has been suggested, "lacked political will" to take action on the issue.⁴

In other cases, previously robust policies are allowed to falter. Thus, while Burundi had established a series of measures to assist IDPs following the end of the civil war in 2000 (measures which have met with varying success), in the past three years the government has done nothing to respond to new IDP flows triggered by escalating violence and by gross human rights violations by the government.⁵

In some cases, there are failures in implementing aspects of a law or policy. The Government of Iraq's 2008 National Policy on Displacement outlines support for varied durable solutions for IDPs, including return, local integration, and resettlement, but there are reports of coercion and forcible returns.⁶ In Ukraine, the IDP registration process remains problematic in spite of international concerns and requires IDPs to constantly confirm their actual place of residence.

Why does implementation fail?

There are three explanations for the failure of implementation. The first is where a government commits to the norms embodied within the Guiding Principles but is unable to move forward in the implementation process. This may be due to a lack of State capacity, whereby the government lacks the necessary financial, practical and symbolic resources, and may also occur due to domestic opposition from within and outside the government.

The second reason for implementation failure is where governments driven primarily by reputational concerns decide to make a strategic rhetorical commitment to the Guiding Principles but have no plan to follow through on implementation.

Finally, States may be responding to advocacy efforts from international and non-governmental organisations. This external institutional engagement may persuade governments to create policies or laws where they otherwise may not have taken action; without further pressure, however, there will be little follow-through implementation.

Unfortunately, the involvement of international actors in the drawing up of laws and policies does not appear to make a significant difference to their implementation. Actors including the UN Refugee Agency (UNHCR) and the Norwegian Refugee Council (NRC) have been involved in the drafting process of 33 of these laws and policies. Such efforts have a record of producing the strongest policies on paper, most closely reflecting the Guiding Principles, yet here, too, the implementation picture is less clear. Only 13 of the 33 laws and policies drafted with such assistance have been robustly implemented and an equal number have had significant implementation difficulties. Seven have not been implemented at all.

For example, Afghanistan's 2013 National Policy on Internally Displaced Persons was described as a landmark instrument which established a comprehensive framework of rights for IDPs.⁷ In drafting the policy the government was assisted by a range of international actors including UNHCR, the UN Office for the Coordination of Humanitarian Affairs, NRC and the UN Migration Agency (IOM), yet its implementation has been very problematic for three reasons. Most critical is the ongoing Taliban insurgency. At the same time, however, the Ministry of Refugees and Repatriation, tasked with leading policy implementation, lacks resources, capacity and political clout. Finally, while many

IDPs have expressed interest in integrating locally, issues over land rights have meant that there is significant opposition at the provincial and local levels and little movement forward on action plans.

What factors lead to successful implementation?

Across those States that have successfully implemented their own IDP laws and policies, three factors are clear. First, and unsurprisingly, successful implementation is linked to **strong State capacity**. In Azerbaijan, an initially weak response shifted as the government recognised that IDPs were likely to remain displaced in the long term. Starting in 2001, the government worked actively to improve its legislative framework to ensure that IDPs were able to receive assistance and long-term housing, committing up to US\$5.5 billion from the State Oil Fund. But such efforts do not necessarily require significant domestic resources. Liberia was able to build its capacity in close cooperation with international aid agencies in order to support an effective return effort. Sierra Leone similarly led an effective return strategy with the assistance of peacekeepers in the country.

Second, **accountability to other domestic institutions**, most notably the courts, is also critical. The Colombian Constitutional Court has gone so far as to rule that the Guiding Principles should “form part of the constitutional block”.⁸ This has given the court the power to criticise the government for failing to enforce existing legislation and for ineffective implementation of policy. Similarly, after initial failures to respond to its own internal displacement situation, the Georgian Constitutional Court has pushed the government to bring its laws in line with the Guiding Principles.⁹

Third, **accountability to the domestic population** can also drive the implementation process. In both Georgia and Sri Lanka, implementation efforts significantly improved after changes in

government, one through revolution, the other through election. Accountability at the international level can also be a significant factor. In the case of Croatia, international actors including the European Union put pressure on the State to end discriminatory practices towards ethnic Serbian IDPs.

There is a role for international actors to support these processes and improve the rates of successful implementation of such instruments. Steps may include providing assistance to governments to ensure that they have the capacity to implement these instruments; this may involve identifying and supporting lead ministries and ensuring that government officials receive training on the new laws and policies. International actors should also identify and support training programmes for independent domestic institutions such as courts and national human rights institutions that can support law and policy implementation and serve as accountability checks on the process.

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1. See article by Nicolau and Pagot in this issue.
2. This article draws on the author's forthcoming book *Protecting the Internally Displaced: Rhetoric and Reality* (Routledge) bit.ly/Orchard-Protecting-Internally-Displaced-2018
3. Findings are based on a desk study across the 40 States based on publicly available data from a range of organisations.
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5. United Nations Human Rights Council 'Report of the United Nations Independent Investigation on Burundi', 20 September 2016, A/HRC/33/37, 19 bit.ly/UNHRC-UNIIB-final-report-2016
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8. IDMC 'Law and Policy Database: Colombia' www.internal-displacement.org/law-and-policy/country/CO
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