

Respect the laws that protect uprooted people

Introduction

There are more than 65 million people displaced globally due to conflict and violence. The majority are people who have become displaced within their own country. Technically they are not refugees as they have not crossed any borders, therefore they are classified as internally displaced persons (IDPs). International focus on the plight of IDPs is substantially less than on refugees and migrants. Christian Aid is campaigning to increase awareness of the plight of IDPs and advocate for their protection. As for all people, IDPs should be able to live in dignity, with happy and fulfilling lives. This starts with respect of their legal rights and protection under international humanitarian law, as reflected in the UN Guiding Principles on Internal Displacement.

This briefing presents ways that laws to protect IDPs can be respected, and notes that the responsibility of the state is at the heart of the solution.

What challenges do IDPs face?

IDPs often experience many of the same risks as other civilians in need of protection from conflict, disasters and other causes. Yet the experience of internal displacement also creates heightened and distinct risks in terms of protection. The idea of returning IDPs to their original home needs to be better contextualised. Often IDPs are trapped in situations of protracted displacement (for a long or extended period of time) due to continuing tensions or environmental risks in the areas from which they fled, and the unwillingness or inability of state actors to protect them, and there is no viable option to return. As most IDPs do not live in camps but in communities which comprise both displaced and non-displaced people, focus on support needs to be broad and embrace a community-based approach.

Apart from ongoing conflict, there can be other drivers which force people to become IDPs. Changes in property ownership is one example. The most common situation is that property has now become occupied by others. Frequently there is not enough state

involvement in rectifying these problems and often the costs for displaced people to make legal challenges are exorbitant and therefore impossible to realise. Frequently the cost of returning is prohibitive if homes and livelihoods have been destroyed.

In these cases, IDPs invariably do not have the capital needed to re-establish themselves and so are reticent about return. Land and property entitlement, and the lack of access to effective mechanisms to restore their housing, land and property, is frequently a problem for IDPs. States need to recognise that land rights are linked to durable solutions for IDPs. Therefore, it is essential that respect for the rights of victims of displacement includes access to legal channels. These can act swiftly in order to restore their rights to housing, land and property, and quickly re-establish their livelihood in the place of their choice.

Why laws that protect IDPs matter

At the 2016 UN General Assembly, states agreed to put into effect a two-year ratification process for two global Compacts, one on refugees and the other on migration. The aim was to provide a comprehensive framework which would ensure the safety of people on the move. A glaring omission from the Compacts are IDPs, who represent nearly three quarters of the world's forcibly displaced population.

The protection of IDPs requires focus, in just the same way as the protection of refugees and migrants. IDPs suffer from a lack of access to their rights as states fail to protect them from being forced from their homes. Once displaced, states usually do not provide adequate emergency assistance to IDPs. In protracted displacement situations, states almost always do not provide IDPs with adequate support to return or integrate into other communities.

Leave no-one behind

In an age where we are focusing on 'leaving no-one behind', the fact that IDPs are overlooked is unacceptable. Christian Aid recognises that there are different groups

'It would be a great failure of humanity to limit whom we help based on lines on a map.'

Open letter from humanitarian and development leaders, 2016.¹

‘Respecting the law would go a long way in preventing people from having to leave their homes in the first place. And it would dramatically reduce the plight encountered by those who have left. Respecting and ensuring respect of the law are essential for addressing a root cause of the human cost generated by forced displacement.’

Peter Maurer, President of the International Committee of the Red Cross (ICRC), 2017.

The UN Guiding Principles

Twenty years ago, the first representative of the UN Secretary General on Internally Displaced Persons developed Guiding Principles for the protection of IDPs, as a response to the growing number of IDPs worldwide.

The UN Guiding Principles on Internal Displacement, presented to the UN in 1998, affirm that respect needs to bring together both national and local authorities, as well as humanitarian and development actors, to effectively support internally displaced persons.

It needs to be a process rooted in international law so that:

- (a) Internally displaced persons are in a position to make an informed and voluntary decision on the solutions they would like to pursue.
- (b) They participate in the planning and management of the solution so that their needs and rights are considered in recovery and development strategies.
- (c) They have safe, unimpeded and timely access to all actors supporting the achievement of solutions including non-governmental and international humanitarian or development actors.
- (d) They have access to effective mechanisms that monitor the process and the conditions on the ground, and;
- (e) In situations of displacement resulting from conflict or violence, they are at least indirectly involved in peace processes and peace-building efforts and such efforts reinforce viable solutions. Processes to support an equitable solution should be inclusive and involve, on the basis of full equality, all parts of the displaced population, including women, children (in accordance with their age and level of maturity), persons with special needs and persons who are potentially marginalised.²

of IDPs who are more at risk than others. Frequently this can be women and children, who make up 70% of IDPs³ and are often excluded from accessing state support like education and healthcare due to political and social barriers. Others are at risk due to their socio-economic status, religious or political beliefs, or ethnicity.

Afghanistan: the plight of women IDPs

From our partners’ work in Afghanistan we have seen how women who have returned from Pakistan face administrative barriers that prevent them from finding accommodation. This has led to women becoming internally displaced. The Afghan Government has introduced an IDP policy, which includes returnees in its scope, but it is not fully implemented. While there has been productive work to reduce internal displacement, the sheer volume of people returning to the country alongside existing instability means that it is difficult to support all IDPs. Single women returning to Afghanistan are at particular risk of homelessness due to documentation problems, and this is an issue that the Afghan Government needs to urgently address. As a result, women have resorted to using informal social networks for accommodation and

support. This is not always possible, especially for returnees, as they may have spent many years outside of Afghanistan and do not have any family or linkages to draw on.

Recognising IDP groups

In order for IDP groups to be given the help and respect they need, and to which they are entitled, a state must first recognise the situation of internal displacement and identify the IDP groups and individuals within their borders.

Formal recognition of what constitutes an IDP (set out in the introduction to the UN Guiding Principles)⁴ is descriptive, and being an IDP does not constitute a specific legal status in international law. It simply describes the factual situation of a person being uprooted within his/her place of habitual residence, and remaining located within national borders, and draws attention to the characteristics of IDPs that make them inherently vulnerable.

Protect IDPs

All displaced people need to be accorded protection. By this we mean all people have access to unfettered respect of their rights as outlined in domestic human rights law, international human rights law, refugee law, the constitutions of countries that host

displaced people, and benefit from the protection of international humanitarian law.

Human rights law covers the full range of rights, including civil and political rights, such as the right to freedom of movement, the right to political participation, and economic, social and cultural rights, including the rights to education and health.

States and their agents have a legal responsibility to protect their citizens. In situations of armed conflict, that responsibility may extend to all parties to the conflict under international humanitarian law, including armed opposition groups. Impartial humanitarian and human rights actors play an important role when invited to help states and other appropriate authorities who are unable to fulfil their protection obligations.

There are three types of protection activities that can be carried out concurrently:

- **responsive** – to prevent or stop violations and abuses of international law
- **remedial** – to ensure a remedy to violations, including through access to justice and reparations
- **environment-building** – to promote respect for rights and the rule of law.⁵

The need for national laws and policies to protect IDPs

As of March 2016, only 27 states⁶ had enacted laws, policies or other national instruments specifically on internal displacement, and nine more were in development around the world. Some countries like Sudan and Burundi have included the UN Guiding Principles in peace agreements.⁷

However, a number of states have joined this effort over the past year with the support of the UN Special Rapporteur on IDPs and UN agencies.

The following points are a range of policy proposals which domestic infrastructure needs to be based on to support IDPs effectively (based on the UN Guiding Principles):

1. Prevent situations that create displacement and the longer-term ramifications that displacement has on individuals and communities.
2. Create a broader understanding across public institutions of responsibilities towards protecting IDP rights. Ensure there is awareness of internal

displacement as a national issue that needs addressing.

3. Develop and implement robust monitoring on internal displacement.
4. Roll out and continually refresh training on IDP rights for state employees.
5. Develop and implement national policies on IDPs.
6. Create a national legal framework to uphold the rights of IDPs.
7. Establish an IDP Ombudsman or focal point to facilitate coordination within state institutions, and with international and local partners, including IDPs.
8. Recognise, consult and collaborate with national human rights organisations that are active in protecting IDP rights.
9. Ensure that IDPs are given a voice and are actively engaged in the decision-making process.⁸
10. Recognise that in protracted displacement situations, return is not always an option for IDPs. Provide for measures for satisfactory resettlement; and facilitate other durable solutions in accordance with the protection afforded by international law.
11. Allocate adequate resources to manage internal displacement, fulfill the rights of IDPs, and ensure protection under international humanitarian law.
12. Work constructively with the international community in emergencies when states are unable to adequately respond.

It is paramount that any work to ensure the protection of IDPs does not happen at the expense of other groups. It is important to promote equality across all segments of the population so that no-one is left behind.

Towards a global agreement on IDPs

In the event that states cannot or are incapable of providing protection to IDPs, other states may be able to support them to overcome barriers. Christian Aid is therefore calling for states to integrate the UN Guiding Principles on Internal Displacement into their national laws and policies to support states to protect, and support durable solutions for, IDP populations within their borders.

Joint action at a regional level could also help improve the national context for the rights of IDPs. The African Union Convention for the Protection and Assistance of Internally

‘The two Compacts may well be a turning point in how effectively states and the wider international community address the humanitarian consequences related to migration, refugees and IDPs.’⁹

President of ICRC on the 2018 Compacts on Refugees and Migration.

Protecting IDPs in Africa

In Africa the Kampala Convention (2012) is the world's first continental instrument that legally binds governments to protect the rights and wellbeing of people forced to flee their homes from conflict, violence, disasters and human rights abuses. The convention is a shared framework, but the continent's diverse realities and challenges mean that individual countries have taken different approaches to it. Not all African States have made a legally-binding commitment to the convention. Although the convention can be seen as a success, the fact that internal displacement exists in signatory countries, as well as the key countries who have not made it legally binding, demonstrates the difficulties that states have in responding to internal displacement.¹⁰

Displaced Persons in Africa (Kampala Convention) demonstrated the value of a regional treaty on displacement that avoided impinging on states' sovereignty.

This could serve as a model for similar action in other regions. It could also allow for different experiences of internal displacement in certain countries or regions, such as organised crime in Central America or the impacts of climate change in the Pacific.

This approach could have wider benefits: 'a common framework may also increase regional stability, reduce the likelihood of mass refugee movements and strengthen relations between countries by fostering new forms of collaboration.'¹¹ Such regional instruments could eventually pave the way for a global agreement.

Protecting those returning

Another area of respect that the international community needs to address is 'returns'. Increasingly over the last few years, there has been a growing trend of countries pressuring non-nationals to return to their countries of origin, creating a new wave of internal displacement. This is exemplified by the large numbers of returned Afghan refugees from Pakistan and Iran. There is also a growing effort by European countries (UK included) to push for returns to be part of the UN Compact on Migration.¹² These countries see this as a means of getting official endorsement for increasing the level of returns. Christian Aid recognises that returning should be a choice that people can make but there must be no coercion in this decision.

It is the responsibility of states to respect the rights of people and return should not infringe on these rights. In this light, we support the plan of action that the Internal Displacement Monitoring Centre (IDMC) is proposing on returns as part of the Compacts on Refugees and Migration. The Global Compact

on Responsibility Sharing for Refugees recognises returning refugees who are unable to integrate sustainably in their place of origin, or elsewhere, are actually internally displaced persons, and qualify for protection and assistance as any other IDP would. To this end, the IDMC is calling for: better data on the full extent of displacement; and for states to implement the UN Guiding Principles on Internal Displacement.

Respecting equality for all

Localisation of humanitarian responses presents a compelling possibility to promote durable solutions for IDP situations.¹³

Local actors are best placed to identify and implement solutions for protracted displacement, when returning home is not an option.

This is because local actors have a deeper understanding of the socio-economic contexts in the areas in which they are based. They understand local cultural dynamics as well as other key actors and are able to provide support that larger international NGOs will never be able to. The solution lies in respecting equality for all citizens, delivering community-based solutions that work not only for IDPs but for all people in the communities in which they exist. In this way, if humanitarian aid is delivered through these local mechanisms, rather than it being imposed from external actors, IDPs are more likely to be protected.

Democratic Republic of Congo: Welcome from host communities

In the Democratic Republic of Congo (DRC) the majority of IDPs are not directly supported by international NGOs. Instead they live in what are called 'host families', where the host will give accommodation and support over an unspecified period of time. However, there is rarely any financial aid provided to the host. If the international community was better

'With internal displacement accounting for two thirds of all forcibly displaced people, the political, humanitarian and development agendas must prioritise this issue.'

António Guterres,
UN Secretary
General, 2017.¹⁴

at supporting locally-generated responses like these, it is more likely that the rights and dignity of individuals would be respected.

Conclusion

2018 marks the 20th anniversary of the UN Guiding Principles on Internal Displacement. This is a unique opportunity for states, UN and civil society actors to work together with IDP-affected states and the Special Rapporteur on the Human Rights of IDPs in galvanising, launching and supporting national level action aimed at preventing internal displacement. This will enhance protection for IDPs and support durable solutions for them.

In addition, though the UN Compacts on Refugees and Migration will not directly address the needs of IDPs, they will provide an important opportunity to promote the adoption of binding instruments to ensure the protection of IDPs. We are calling for states to integrate the UN Guiding Principles on Internal Displacement into their national laws and policies. We are actively supporting the UN Special Rapporteur for IDPs to pursue this aim.

We call for a global initiative to strengthen protection of IDPs, including:

- The UN Secretary General to commission a high-level expert report on the situation of IDPs.

- States, UN agencies and experts to meet in an Independent Commission or alternative to consider the report's recommendations.
- Where appropriate, some of these recommendations should be included in the regular UN General Assembly Resolution.
- Good practice to be developed into practical and aspirational standards that promote the best practice and provide encouragement and knowledge.

Christian Aid also calls for:

- Work conducted with IDPs to fall within the framework of advancing the localisation agenda of the World Humanitarian Summit.

Importantly, there is a role for national and international civil society in holding governments to account for upholding the rights of IDPs and their protection under international humanitarian law, speaking up for IDPs when they see these rights neglected and in amplifying the voices of IDPs themselves.

Author: Fraser Murray

Refugee Policy and Advocacy Adviser

Acknowledgements:

This paper was produced with support from Alison Doig and Jane Backhurst.

A FAIR deal for IDPs

Christian Aid is calling for all countries to ensure a FAIR deal for IDPs: one that is funded, ambitious, inclusive and respects international law.

Funded for the long-term rather than on a short-term appeal basis.

Ambitious moving beyond commitments at summits to action that matches the scale of the problem.

Inclusive protection for all people on the move, especially those currently left behind such as the stateless and people who have been trafficked.

Respects international law which protects all civilians – it is rights-based, respecting the fundamental human rights of IDPs, and during war it ensures all civilians are protected by international humanitarian law especially when governments suspend rights. The UN Summit must kick start a process for all states to integrate the Guiding Principles on Internal Displacement into national laws and policies, which if respected would ensure protection and assistance for IDPs, and help to stop them being discriminated against.

Endnotes

- 1 *The invisible majority: helping internally displaced people*, Open letter by the ERC and co-signatories, 2016, <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2016/09/22/humanitarian-and-development-leaders-urge-more-support-for-internally-displaced-persons-and-their-host-communities.html>
- 2 *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, Walter Kälin, United Nations General Assembly, 2009, www2.ohchr.org/english/issues/idp/docs/A.HRC.13.21.Add.4_framework.pdf
- 3 *Girl, disrupted*, 2014, Internal Displacement Monitoring Centre, www.internal-displacement.org/assets/publications/2014/201403-global-girl-disrupted-pic-brief-en.pdf
- 4 'Introduction', *Guiding Principles on Internal Displacement*, OCHA, www.un.org/ruleoflaw/files/guiding_principles.doc
- 5 Inter-Agency Standing Committee Policy on Protection in Humanitarian Action, 2016, <https://interagencystandingcommittee.org/protection-priority-global-protection-cluster/documents/inter-agency-standing-committee-policy>
- 6 Task Team on Law and Policy, Global Protection Cluster, www.globalprotectioncluster.org/en/areas-of-responsibility/law-and-policy-on-internal-displacement.html
- 7 *Regulatory Frameworks on Internal Displacement*, IDMC, www.internal-displacement.org/assets/publications/2016/UNHCR-GPC-Reg-Framework-IDP.pdf
- 8 IDP voices are absent in the decision-making process. Some states and the UNHCR are calling for more refugee engagement in the UN Compact on Refugees, which highlights a significant oversight.
- 9 *The critical challenges of migration and displacement*, International Committee of the Red Cross, 2017.
- 10 *The Kampala Convention Two Years On: time to turn theory into practice*, IDMC, 2014, www.internal-displacement.org/assets/publications/2014/201412-af-kampala-convention-brief-en.pdf
- 11 See note 7.
- 12 *Global Report on Internal Displacement*, IDMC, 2017, www.internal-displacement.org/library/publications/2017/2017-global-report-on-internal-displacement
- 13 *Leave no-one behind – IDPs living on the margins of international protection*, Christian Aid, 2017, www.christianaid.org.uk/sites/default/files/2018-01/IDPs-living-margins-briefing-J39007-sep2017.PDF.
14. *No time to retreat*, Executive Summary, OCHA, 2017, https://reliefweb.int/sites/reliefweb.int/files/resources/No%20time%20to%20retreat%20Executive%20Summary_NEW_web_nov27.pdf

actalliance

Eng and Wales charity no. 1105851 Scot charity no. SC039150 UK company no. 5171525 Christian Aid Ireland: NI charity no. NIC101631 Company no. NI059154 and ROI charity no. 20014162 Company no. 426928. Company no. 426928. Printed exclusively on material sourced from responsibly managed forests. The Christian Aid name and logo are trademarks of Christian Aid. Christian Aid is a key member of ACT Alliance. © Christian Aid February 2018 J57051

Christian Aid is a Christian organisation that insists the world can and must be swiftly changed to one where everyone can live a full life, free from poverty.

We work globally for profound change that eradicates the causes of poverty, striving to achieve equality, dignity and freedom for all, regardless of faith or nationality. We are part of a wider movement for social justice.

We provide urgent, practical and effective assistance where need is great, tackling the effects of poverty as well as its root causes.

Christian Aid, 35 Lower Marsh, London SE1 7RL
020 7620 4444 caid.org.uk