



CAPACITY BUILDING FOR LAW AND POLICY-MAKING ON INTERNAL DISPLACEMENT

SESSION 7: PREPARATION, SCOPE AND TYPE

TYPE AND SCOPE OF NATIONAL INSTRUMENTS

SCOPE

Based on an assessment of the displacement situation and, if applicable, the outcome of a legal review, law and policymakers will be able to a) decide whether to develop a specific instrument or amend existing legislation, and b) determine the scope of the instrument required.

SPECIFIC INSTRUMENT OR AMENDMENTS?

	Specific instrument	Amendments to existing sectoral legislation
Form	Covers displacement issues in a single law or policy	Includes displacement issues in thematic laws and decrees
Advantages	<ul style="list-style-type: none"> Displacement is addressed comprehensively Reduces risk of gaps Easier to monitor implementation 	<ul style="list-style-type: none"> In most cases legally binding Automatically involves all relevant ministries
Disadvantages	<ul style="list-style-type: none"> Many ministries need to be involved: difficult and slow process More political resistance 	<ul style="list-style-type: none"> May leave gaps unaddressed Risk of uncoordinated activities Lack of knowledge and awareness of displacement may be an obstacle

Specific instruments such as those adopted in Afghanistan, Colombia, Kenya, Uganda, Ukraine and Yemen, and soon to be adopted in Somalia and Somaliland, cover all displacement issues and cut across all areas that require regulation.

INCREASED VISIBILITY, AWARENESS AND COMPREHENSIVENESS: THE POTENTIAL FOR CHANGE

Before Colombia adopted specific legislation on IDPs in 1997 the government's response to displacement was ad hoc and ineffective. Despite its scale, the issue had very low priority and little visibility. There were failings in the implementation of law No. 387 of 1997, but it was a milestone in that it brought much-needed attention to the issue, acknowledged IDPs' specific needs, accepted the importance of a human rights-based approach to responses and established institutional responsibility for assisting and protecting the country's displaced population.

POTENTIAL POLITICAL SENSITIVITY:

Nigeria ratified the Kampala Convention in May 2012 and rewrote its draft policy on IDPs to incorporate its provisions. As of December 2014, however, the federal cabinet had yet to adopt the policy, despite persistent advocacy on the issue. The failure to define roles and responsibilities continues to hamper the humanitarian and development response, a holistic approach towards durable solutions and efforts to prevent and prepare for future displacement.

SECTORAL INSTRUMENTS:

The US Hurricane Education Recovery Act was adopted following Hurricane Katrina and addresses, among other issues, the needs of displaced students and teachers.

COMPREHENSIVE OR PARTIAL?

Limiting the scope of a national instrument is possible and in some cases may be appropriate. It may be limited to:

- A particular cause of displacement:

India's 2003 national policy on resettlement and rehabilitation for project-affected only addresses displacement caused by development projects.

- A particular geographical area
- A particular phase of displacement – such instruments are most often developed in response to long-standing situations:

Azerbaijan, Bosnia and Herzegovina and Serbia have adopted laws and policies that only address return and resettlement

- A particular timeframe

RISK OF DISCRIMINATION

“When limiting the scope of a national instrument, it is important to be aware of the possible consequences of such a step. Limitations must not be discriminatory and must not exclude certain IDPs from exercising their rights.

WHAT SHOULD THE MINIMUM SCOPE OF AN INSTRUMENT BE?

“A national instrument should, at a minimum, address the challenges of the current displacement situation. It should also be flexible enough to anticipate and adapt to changes in the situation. Crucially, it should cover the need to achieve durable solutions as it will provide a much-needed basis on which to engage in the long-term and complex process of doing so.”¹

“The benefit these instruments is that, because they were developed in response to existing situations of internal displacement, they reflect — to a greater or lesser extent — the particular institutional, procedural, and regulatory challenges faced by authorities, civil society, and the internally displaced in protecting IDPs’ rights. However, their scope is also limited, which leaves broader issues concerning IDPs unattended. Moreover, in practice, many of these laws and policies fail to address key substantive issues that would contribute to their effective implementation. For example, they may not provide a description of an IDP, identify funding sources, or provide a mechanism to monitor responsibilities.”²

TYPE OF INSTRUMENT

LAW	POLICY
<ul style="list-style-type: none">▪ Binding▪ Backbone of a national framework▪ Adopted by act of parliament	<ul style="list-style-type: none">▪ Non-binding▪ Can precede or implement legislation
Focus <ul style="list-style-type: none">▪ Creates entitlements for individuals▪ Sets out obligations▪ Designates responsibility▪ Most suitable to address a number of issues - rights , HLP, criminal mechanisms	Focus <ul style="list-style-type: none">▪ Decision-making processes▪ Coordination mechanisms▪ Operational guidelines and procedures
NB: Because of the length of time required for approval and adoption, they are often not useful in emergency situations	Examples: Uganda’s 2004 national policy on IDPs, Afghanistan’s 2013 national policy on internal displacement and Yemen’s 2014 national policy for addressing internal displacement
Examples: Colombia’s law no. 387 of 1997, Kenya’s 2012 Act on IDPs and Ukraine’s 2014 law on IDPs	

¹ IDMC/Brookings, National instruments on internal displacement: A guide to their development, 2013, available at: <http://goo.gl/iXiA6B>

² Brookings Institution, A developing trend: Laws and policies on internal displacement, 2006, available at: <http://goo.gl/VO4Tb5>

STRATEGY	ACTION PLAN
<p>Focus</p> <ul style="list-style-type: none"> ▪ Purposes, objectives and outcomes of a law, policy or action plan <p>Examples: Timor-Leste</p>	<ul style="list-style-type: none"> ▪ Well-suited for urgent situations, also used to implement laws <p>Focus</p> <ul style="list-style-type: none"> ▪ Clarifies responsibilities and tasks <p>Examples: Turkey's 2006 provincial action plan to address IDPs' needs in Van</p>

STRATEGY

In December 2007, the government of Timor-Leste launched *Hamutuk Hari'i Futuru* or Building the Future Together, a national recovery strategy that aimed to address displacement as part of a comprehensive plan. The strategy rests on five pillars - shelter and housing, social protection, security and stability, socio-economic development and confidence building and reconciliation. One of its stated objectives was to help remove the obstacles preventing IDPs' return and help them achieve durable solutions.

The strategy recognised the three settlement options available to IDPs. Those willing and able to return home were eligible for a cash recovery grant of up to \$4,500 based on the extent of the damage to their property, or a basic house plus \$1,500 if their home had been damaged beyond repair. Those unable or unwilling to return could either use their cash recovery grant to build a house on state-owned land, or settle in a basic house on a resettlement site. Temporary relocation to a transitional shelter site was offered for those willing to return, but unable to do so immediately.