

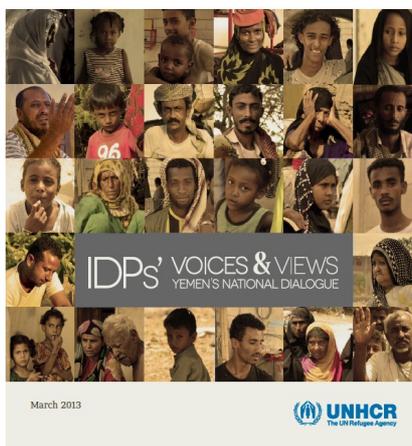
## LAW AND POLICY-MAKING ON INTERNAL DISPLACEMENT

# SESSION 4: ORGANISING A PARTICIPATORY PROCESS

## INVESTING IN A CONSULTATIVE PROCESS

The development of a national instrument on internal displacement is a process worth investing in for the following reasons:

1. It is an opportunity for the government to demonstrate its approach to fulfilling its primary role and strengthen its capacity.
2. It brings together all those involved in addressing internal displacement in the country concerned.
3. It triggers discussions among all participants in the process and provides advocacy opportunities.
4. It helps to resolve misunderstandings and reach agreement on key notions, definitions and concepts.
5. It helps to identify a common way forward in resolving displacement.
6. It gives IDPs and other communities affected by displacement an active role and the chance to contribute, helping to counteract their sense of hopelessness and frustration.
7. It is an excellent opportunity to involve donors.
8. It is an important learning exercise for everyone involved.
9. The outcome will shape the instrument's content and prospects for its successful implementation.<sup>1</sup>



### IDPs' PARTICIPATION AND GOOD PRACTICE: YEMEN'S NATIONAL DIALOGUE

“Internally Displaced Persons (IDPs) are among the stakeholder groups whose voices and views are critically important to include in the National Dialogue ... IDPs have a direct interest in the resolution of the conflicts that uprooted them so they can find a lasting solution ... Ensuring that IDPs' voices and views can be heard in the National Dialogue Conference is essential to the inclusiveness of the process and its relevance to the half a million Yemenis who have been internally displaced. As the UN Secretary-General recently emphasized: ‘A successful peacebuilding process must be transformative and create space for a wider set of actors – including, but

<sup>1</sup> IDMC-NRC/Brookings-LSE, National Instruments on Internal Displacement: A Guide to their Development, August 2013, available at <http://goo.gl/GXab9D>

not limited to, representatives of ... internally displaced persons – to participate in public decision-making on all aspects of post-conflict governance and recovery. Participation and dialogue enhance national ownership, and they leverage resources and knowledge for peacebuilding existent within post-conflict societies.’

“To facilitate inclusion of IDPs’ voices and views in the National Dialogue, the Office of the United Nations High Commissioner for Refugees (UNHCR) organized a series of focus group discussions and other consultations with IDPs across Yemen. These consultations were convened by UNHCR in 2012 as part of a larger UN project, supported by the UN Peacebuilding Support Office and Peacebuilding Fund. One of the aims of this project was to empower stakeholders, particularly civil society, youth, women, and IDPs, to be able to meaningfully engage in the National Dialogue. From August to October 2012, UNHCR facilitated 30 focus group discussions with IDPs in Aden, Amran, Haradh and Sana’a. The results of these discussions were further discussed and validated by regional workshops with IDPs in Aden, Haradh and Sana’a in November and December. In total, 3,646 IDPs, including 1,483 women, were consulted ...

“Key elements that IDPs emphasized include:

- Safety and security of civilians must be ensured by all parties in all phases of displacement, in compliance with international human rights and international humanitarian law;
- A national legal and policy framework for responding to and resolving internal displacement should be developed and implemented by the Government;
- An early warning system as well as preparedness and disaster response mechanisms and plans should be established at the national and local levels to respond to displacement caused by natural disasters and conflicts;
- Increased attention to the specific concerns of IDP women, children, older persons at risk and other groups with specific vulnerabilities;
- Information-sharing and consultation with IDPs should be enhanced, including informing civilians about unfolding conflict situations, engaging IDPs in the design and delivery of assistance programmes, and ensuring IDPs have adequate information about the conditions in places of potential return;
- Housing, land, and property restitution or, if not possible, compensation through the establishment of a mechanism for this purpose; we don’t only want food and other assistance from international organizations; we want to return to our homes and villages.”<sup>2</sup>

## A TWO-YEAR PROCESS IN AFGHANISTAN

On 25 November 2013, the Afghan government approved a national policy on IDPs that had been nearly two years in the making. The then-president, Hamid Karzai, set the process in motion when he established a task force that included the Ministry of Refugees and Repatriation (MoRR) and the Afghanistan Natural Disaster Management Authority (ANDMA) to do something about the situation of the country’s IDPs.

The task force established a policy working group to support MoRR, organised a visit from the UN’s special rapporteur on IDPs’ human rights, engaged an external expert to assist in the work, and held a two-day national consultative workshop in July 2012, followed two months later by a first round of provincial consultations. In October 2012 ProCap seconded a senior protection officer to UNHCR to serve as an advisor to MoRR on the consultation process and the drafting of the policy.<sup>3,4</sup>

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<sup>2</sup> UNHCR, IDPs’ voices and views: Yemen’s national dialogue, March 2013, available at: <http://goo.gl/3FmKfM>

<sup>3</sup> Forced Migration Review, An IDP Policy for Afghanistan: from draft to reality, May 2014, available at: <http://goo.gl/uQW7od>

<sup>4</sup> The Protection Standby Capacity Project is an inter-agency initiative to build stakeholders’ capacity and improve humanitarian protection responses, for more information see: <https://goo.gl/GVIRmn>

*“The IDP Policy Working Group: A broad-based membership. The IDP Policy Working Group is part of an inclusive process uniting governmental, international and national non-governmental organizations and UN agencies. The membership of UN-Habitat, UNDP and MRRD confirms development actors’ engagement. The government’s involvement and ownership of the process is reflected in a strong government membership (more than 50% of members). Members of the IDP Policy Working Group include the Office of Administrative Affairs of the President, the Office of the First Lady, MoRR, MRRD, IDLG, AIHRC, ANDMA, UNHCR, UN-Habitat, OCHA, IOM, NRC and the Afghanistan Protection Cluster (APC). The IDP Policy Working Group is part of the national IDP task force co-chaired by MoRR and UNHCR.”<sup>5</sup>*

## MAIN CHALLENGES

The senior protection officer deployed to support the process made the following observations:<sup>6</sup>

**“GOVERNMENT CAPACITY AND ENGAGEMENT:** While MoRR had hundreds of staff in Kabul as well as in the provinces, their actual capacity was low, with insufficient skills or legal knowledge to draft a policy. Engaging different ministries to provide input to the policy was extremely difficult, though some input was achieved through bilateral one-to-one meetings. Endemic corruption in government departments was, and continues to be, a serious obstacle to efficient progress.

**“ENGAGING WIDER PARTICIPATION:** The IDP Policy Working Group, set up to assist MoRR in the consultation and drafting process, was a small group composed largely of international humanitarian agencies. Attempts to engage the Afghan Human Rights Commission, ACBAR (Agency Coordinating Body for Afghan Relief) or national Afghan NGOs were largely unsuccessful. There was input from a limited number of groups that were specifically approached, notably those engaged in research such as TLO (The Liaison Office) and Samuel Hall, but these were exceptional. Additionally, the security situation and limited access in many regions made it difficult to engage with governors and other local officials at the provincial level, who are essential to implementation.

**“IDP REPRESENTATION:** Holding meaningful consultations with IDPs was particularly difficult because they do not generally have representative structures to aggregate or express their views. So while meetings were held with many groups of IDPs, the discussions rarely went beyond the specific concrete needs of a particular group, such as water, food, health care, education and jobs.

### ADDRESSING KEY ISSUES

“It proved a major challenge to produce a document that addressed the complexities of key issues in Afghanistan. Most significant was the fact that while governors, mayors and other authorities wanted the IDP issue dealt with, the only solution they could see was ‘return’. The notion of local integration or resettlement was simply not on their agenda, and the idea of giving land to an IDP from another province proved a very difficult concept. The IDP Policy made it clear that all three durable solutions needed to be accepted and that local integration was particularly important for protracted caseloads and for returning refugees unable to go back to their places of origin.

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<sup>5</sup> Samuel Hall Consulting, National Policy on IDPs in Afghanistan: from policy to implementation, 2015, available at : <http://goo.gl/RKSG88>

<sup>6</sup> Forced Migration Review, An IDP Policy for Afghanistan: from draft to reality, May 2014, available at: <http://goo.gl/uQW7od>

“The issue of who is an IDP was, and is, highly controversial. It is easy for Afghans to understand and accept an IDP displaced by conflict or by a sudden-onset natural disaster but much more difficult when displacement results from slow-onset disaster, notably drought, as here the distinction with economic migrants becomes blurred. However, returnees unable to go back to their places of origin and persons displaced as a result of development projects were included as persons of concern in this policy.

“Cities and urban centres have an enormous draw for displaced persons because they are seen to offer security, livelihood opportunities and basic services. However, the Afghan government and the development community have not devoted adequate thought or resources to addressing Afghanistan’s rapid urbanisation and, in particular, to addressing the needs of those displaced who have settled in informal settlements, generally in slums on the edges of the cities. The policy directs attention to this issue, with a particular focus on area-based solutions that encompass not only IDPs but the urban poor more generally.

“Whatever the limitations and challenges of the drafting process, there is now a policy – a tool – which can be used to advocate for the rights of IDPs, to provide guidance on the way forward, and to improve the quality of life for displaced Afghans. Without doubt, the biggest challenge the drafters faced was implementation: how to ensure the policy would actually inform action, programming and legislation, not just gather dust in a bureaucrat’s drawer. Who would be responsible for what? A substantial amount of energy was invested in setting out the responsibilities of the different line ministries, coordinating bodies, and provincial and local authorities, as well as civil society, the international humanitarian and development communities, and other stakeholders. Recognising that displacement manifests itself differently in different regions of the country, primary responsibility for drafting implementation plans and strategies was given to provincial governors, leaving MoRR the task of consolidating these provincial plans into a national one. It remains to be seen how this will play out in reality.”