Innovative Global Governance for Internally Displaced Persons

Walter Kälin

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About the Series

World Refugee Council research papers are policy documents commissioned by the Council from world-renowned experts to help inform the World Refugee Council and its final recommendations. The measures and concepts in these documents do not necessarily reflect the views of the World Refugee Council.

About the Author

Walter Kälin is professor emeritus for international and (Swiss) constitutional law at the University of Bern in Switzerland. He is the present Envoy of the Chair of the Platform on Disaster Displacement (since July 2017) and the former Envoy of the Nansen Initiative on disaster-induced cross-border displacement (2012–2015). He also served as Representative of the UN Secretary-General on the human rights of internally displaced persons (2004–2010); as a member of the UN Human Rights Committee (2003–2008, 2012–2014); and as Special Rapporteur of the UN Human Rights Commission on the situation of human rights in Kuwait under Iraqi occupation (1991–1992). Walter's present research focuses on selected aspects of international human rights law, with a particular emphasis on the protection of displaced persons. His many publications include the recent book *Breaking the Impasse: Reducing Protracted Internal Displacement as a Collective Outcome* (2017), co-authored with Hannah Entwisle Chapuisat.

Acronyms and Abbreviations

CEPREDENAC	Centro de Coordinación para la Prevenciónde los Desastres Naturales en América Central (Coordination Centre for the Prevention of Natural Disasters in Central America)
DRR	disaster risk reduction
ERC	Emergency Relief Coordinator
ExCom	UNHCR Executive Committee
GP20	twentieth anniversary of the *Guiding Principles on Internal Displacement*
IACtHR	Inter-American Court of Human Rights
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
IDMC	Internal Displacement Monitoring Centre
IDPs	internally displaced persons
NDPs	national development plans
SR on IDPs	Special Rapporteur on the Human Rights of Internally Displaced Persons
SRSG	Special Representative of the Secretary-General
UNFCCC	UN Framework Convention on Climate Change
UNGA	UN General Assembly
UNHCR	UN Refugee Agency
UN HRC	UN Human Rights Council
UNISDR	UN Office for Disaster Risk Reduction

Executive Summary

The number of internally displaced persons (IDPs) is at a record high, with most living in protracted displacement. While the humanitarian response in emergency situations is more effective than a decade ago, overall governance — that is, the set of norms, institutions and processes necessary to address internal displacement — remains weak. Recent progress in preventing disaster-related internal displacement has not been mirrored in armed conflict situations. The normative framework to protect and assist IDPs during displacement is relatively strong at the global level. Yet, challenges remain at the country level; despite the fact that approximately 40 countries have adopted some kind of IDP-specific law, policy or strategy, these often lack implementation or address only some aspects of internal displacement. The weakest element of current international efforts is their efficacy in enabling IDPs to regain some measure of self-sufficiency and to ultimately find durable solutions. Since the 2016 World Humanitarian Summit, it is increasingly recognized that addressing internal displacement requires close collaboration between humanitarian and development actors, and, depending on the circumstances, between disaster risk reduction (DRR) and peace-building actors. To improve IDP-related global governance, it is necessary to:

→ enhance leadership at the global level by strengthening the role of UN resident coordinators at the country level and by creating a dedicated position in the UN Secretariat at a hierarchical level that facilitates bridging institutional gaps between all relevant actors;

→ strengthen the nexus between humanitarian and development action (hereinafter, the humanitarian-development nexus) by implementing the United Nations' "New Way of Working" approach to achieve collective outcomes and by providing funding that incentivizes the approach; and

→ make better use of existing accountability mechanisms at national, regional and global levels.

Internal Displacement: Big Challenge but Weak Governance

The number of IDPs is at a record high. In 2017, according to the Internal Displacement Monitoring Centre (IDMC), 11.8 million people were newly displaced by conflict and violence, with another 18.8 million people displaced in the context of disasters triggered by natural hazards (IDMC 2018, 6). At the end of the same year, the total number of people internally displaced by armed conflict and violence, including those displaced in previous years, had reached an estimated 40 million (ibid., v). This number has nearly doubled since 2000.

Large-scale new displacements, in situations where humanitarian access to IDPs in war zones is often denied or otherwise impossible, have certainly contributed to this negative development. At the same time, the growing numbers also reflect the consequences of large-scale protracted displacement (ibid., 14),[1] when IDPs are unable to return home or find another solution, forcing them to live in marginalization for many years or even decades. Such displacement not only affects IDPs but also their host communities. Most IDPs currently live outside camps or collective shelters in informal settlements or with host families in poor parts of urban areas (ibid., 10) where they compete with local populations over basic infrastructure and services and face difficulties accessing livelihoods (Kälin and Entwisle Chapuisat 2017, 38). While contexts vary, the European Commission found that overall "up to 85% of the forcibly displaced find refuge among people who already struggle with poverty in low- and middle-income countries" (European Commission 2018, 2). Humanitarian action is able to save many lives and, due to the so called "cluster approach," has become more effective (Ferris 2014). However, to adequately address these broader issues of marginalization, poverty and lack of resilience, it is increasingly accepted

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1   While the exact number of IDPs in protracted displacement is not known due to a lack of disaggregated data, it is indicative that in 2016, 74 percent of all international humanitarian assistance was addressing the needs of long-term recipients, many of whom are IDPs (Development Initiatives 2018, 22).

that protracted displacement is a development challenge (Christensen and Harild 2009; World Bank 2017). As in refugee situations (Papademetriou and Fratzke 2016), traditional humanitarian responses are insufficient to help IDPs rebuild their lives and achieve durable solutions and, in the worst case, can create humanitarian dependency. Despite these realizations and some progress, development actors remain absent in many displacement situations, and the international community struggles to strengthen the humanitarian-development nexus.

According to present international law, and as recognized by the third principle of the United Nations' *Guiding Principles on Internal Displacement* (hereinafter *Guiding Principles*), the primary responsibility to assist and protect IDPs lies with national authorities. The international community funds and plays an important subsidiary role in a number of areas: setting standards and monitoring their implementation; providing humanitarian assistance and protection to IDPs through its humanitarian organizations and agencies; and supporting efforts to find durable solutions to end internal displacement (alongside a multitude of other actors — humanitarian, development and, depending on the context, human rights, peace-building or DRR). However, the international response to internal displacement is fraught with many challenges. Some of these challenges stem from difficulties at operational levels; others are rooted in political obstacles, such as the unwillingness of governments to assist and protect their IDPs. In many regards, existing global governance is inadequate and too fragile to cope with problems facing the system with respect to internal displacement.

This paper addresses the following questions[2]: What governance gaps and challenges exist in the responses to internal displacement? Are there promising new approaches to internal displacement? How can we build on these approaches to make responses more reliable and effective? In answering these questions, the 1998 UN *Guiding Principles* (UN Commission on Human Rights 1998) will serve as the normative point of reference. Although they are legally non-binding, the UN General Assembly (UNGA) and the UN Human Rights Council (HRC) recognize

the principles as an "important international framework for the protection" of IDPs (UNGA 2005)[3] and thus as an authoritative guide.

This paper focuses on *global* governance, understood as the international *norms, institutions and institutional frameworks*, as well as the *processes*, that shape and guide the behaviour of states and other relevant actors in addressing internal displacement (see Betts 2011a, 69; 2011b, 4). It also looks at governance at regional, national and sub-national levels. The paper first analyzes the governance challenges related to the three phases of internal displacement:

→ how to *better prevent* internal displacement in the context of armed conflict, natural disasters and the adverse impacts of climate change, while also safeguarding the right of affected people to seek refuge in safer locations;

→ how to *create effective normative and institutional frameworks* at domestic levels to ensure both effective protection of and humanitarian access to IDPs during displacement; and

→ how to *end displacement* through sustainable return, local integration or settlement in another part of the country, particularly in situations of protracted displacement.

Next, the paper considers cross-cutting governance challenges, including the need to:

→ enhance leadership at the global level;

→ strengthen the humanitarian-development nexus; and

→ reinforce the use of accountability mechanisms.

The paper concludes with recommendations to the World Refugee Council.

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2   The following discussion looks at internal displacement in the context of armed conflict and violence as well as of disasters triggered by sudden-onset natural hazards. However, it does not cover displacement caused by large-scale infrastructure or other development projects.

3   See also subsequent resolutions, for example, UNGA Resolution 72/182 (UNGA 2017, para. 7) and HRC Resolution 32/11 (UN HRC 2016b, para. 14).

Preventing Internal Displacement

According to the *Guiding Principles*, all authorities and international actors have a duty to prevent and avoid creating conditions leading to internal displacement (Principle 5); refrain from undertaking arbitrary displacement, that is, displacement that cannot be justified with legitimate and compelling reasons (Principle 6); and — at the same time — respect the right of persons to flee and seek safety from armed conflict and other risks in another part of the country (Principle 15).

Regarding the prevention of displacement in the context of armed conflict and generalized violence, the normative framework is very strong: international human rights (for example, UN 1966, art. 12) and humanitarian law (International Committee of the Red Cross 1949, arts. 49 and 147; 1977a, arts. 78 and 85; 1977b, arts. 4 and 17) prohibit arbitrary displacement in clear terms. Those responsible for violations can be held accountable and punished for war crimes or crimes against humanity (UN 1998, arts. 7(2)(d) and 8[2][b][viii]). The International Criminal Court (ICC), regional human rights mechanisms and domestic courts are competent to enforce these obligations and sanction violations. The commissions of inquiry, fact-finding missions and investigations of the HRC often include displacement in their scope of work.[4] However, the use of these mechanisms remains relatively rare, and the overall implementation of obligations to prevent and punish arbitrary displacement in armed conflict situations is weak.

UN treaty bodies such as the UN Human Rights Committee (for example, 2016, para. 31; 2017, para. 29) are also able to monitor the issue, but this is not a core component of their work. The mandate of the Special Rapporteur on the Human Rights of Internally Displaced Persons (hereinafter SR on IDPs) is very important[5] but does not possess effective tools to prevent or sanction displacement. UN Secretary-General António Guterres has declared prevention

of armed conflicts to be one of his priorities (Guterres 2016), but it remains to be seen to what extent his initiative will have a positive impact on the prevention of internal displacement.

At the *regional* level, the Kampala Convention contains binding obligations to prevent internal displacement (African Union 2009, arts. 3 and 4). The Inter-American Court of Human Rights (IACtHR) regularly issues provisional measures to protect communities at imminent risk of being displaced (for example, IACtHR 2009), and in several cases has concluded that the States concerned are responsible for arbitrary displacement (for example, IACtHR 2005; 2013). At the *domestic* level, some national IDP laws or strategies also address the issue of prevention (Nepal 2007, ss. 1, 5, 6, 9.11) and mandate penal sanctions for those guilty of arbitrary displacement (Republic of Kenya 2013, art. 23).

Significant progress has been made in recent years regarding the prevention of displacement in the context of disasters and adverse effects of climate change through the emergence of a governance system with growing potential. At the *normative* level, the Sendai Framework on Disaster Risk Reduction (UNGA 2015a) addresses human mobility, explicitly including internal displacement, and expects states to integrate the issue into their DRR strategies (UN Office for Disaster Risk Reduction [UNISDR] 2018). The Global Platform for Disaster Risk Reduction[6] provides an *institutional framework* for follow-up *processes*, including a biennial forum for information exchange on DRR, discussion of latest developments, and partnership building across sectors. The Executive Committee of the Warsaw International Mechanism for Loss and Damage under the UN Framework Convention on Climate Change (UNFCCC) was mandated by the Conference of the Parties at its twenty-first session in Paris in 2015 to establish a task force to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change (UNFCCC 2015). In 2018, the Conference of Parties endorsed the recommendations made by the task force (UNFCCC 2018). At the *regional* level, a few DRR-institutions and mechanisms, such as

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4   See, for example, UN HRC (2018a) and the reports of the Commission on Human Rights in South Sudan at www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx.

5   See the mission reports of the SR on IDPs at www.ohchr.org/EN/Issues/IDPersons/Pages/Visits.aspx.

6   See www.unisdr.org/we/coordinate/global-platform. The platform is supported by the UNISDR.

Central America's CEPREDENAC,[7] have started to integrate the prevention of disaster displacement into their work. Among the regional human rights courts, the European Court of Human Rights (2008) has derived from the right to life a set of detailed state obligations to prevent disaster-related displacement.

An assessment of governance in the prevention of displacement provides the overall picture of (relatively) strong and weak areas (Table 1).

Protecting and Assisting IDPs during Displacement

While the international community has made much progress in recent decades to deliver life-saving humanitarian assistance to IDPs, the protection of their rights and gaining humanitarian access to areas hosting them remain key challenges.

Protection

The normative framework regarding protection and assistance of IDPs *during displacement* is strong at the global level. Despite their legally non-binding character, the *Guiding Principles,* as so-called "soft law," are more than simple recommendations. The international community has recognized them as an "important international framework for the protection" of IDPs (UNGA 2005). They build on and reflect binding international human rights guarantees that are fully applicable to IDPs who, unlike refugees, are citizens and not aliens who may enjoy lower levels of protection and entitlements. The *Guiding Principles* also synthesize relevant obligations under international humanitarian law. At the regional level, the binding Kampala Convention (African Union 2009) and recommendations by regional organizations (Council of Europe 2006) in other parts of the world complement this comprehensive set of norms.

From a governance perspective, key challenges include incorporating IDP-relevant obligations into domestic law, creating the necessary institutions

and processes to implement them, and ensuring that implementation does, in fact, take place. Some progress has been made in the creation and effective implementation of normative and institutional frameworks at domestic levels through IDP specific laws, policies and strategies. Today, some 40 countries have adopted, in one way or another, specific normative instruments (Orchard 2018; Global Protection Cluster 2019) and sometimes created institutions tasked to address issues related to internal displacement. Examples include national refugee and IDP commissions, interministerial mechanisms housed at the level of the prime minister's office or a specific ministry. However, as the SR on IDPs recently highlighted, "existing national laws often fail to address the specific needs and vulnerabilities of internally displaced people, allocate clear responsibilities to competent authorities at the national and local level, or provide a sound basis for making adequate resources available" (UN HRC 2018b, para. 37).

Not all countries affected by internal displacement have adequate normative frameworks. In Europe, legislation exists in many displacement-affected countries, but it is not always in accordance with international standards. In Africa, the Kampala Convention requires states to enact implementing legislation (African Union 2009, art. 3), but only some of its 27 state parties have done so. In the Americas, the Middle East, South Asia and Southeast Asia, few countries are sufficiently equipped with adequate legal and institutional frameworks.

In 2008, when the *Guiding Principles* celebrated their tenth anniversary, the promotion of legislative initiatives on internal displacement was high up on the international agenda (Brookings Institution 2008). Efforts to support states in developing laws, policies and strategies are weaker today. This decreased attention originates from a lack of political will at country levels or the existence of more pressing legislative priorities. Importantly, the absence of an international organization or agency that is *systematically* investing in advocacy and technical assistance also contributes to this situation. The UN Refugee Agency (UNHCR) and the Council of Europe have been working on legislative issues in some countries, but their engagement is not consistent. For the UNHCR, with its strong tradition of helping states to develop asylum laws and procedures and its responsibility to lead the Global Protection Cluster, this should be a priority.

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7   In full, Centro de Coordinación para la Prevención de los Desastres Naturales en América Central (Coordination Centre for the Prevention of Natural Disasters in Central America); see www.cepredenac.org.

Table 1: Protection from Displacement

Norms	Institutions	Processes
Global		
→ International humanitarian law → Human rights → *Guiding Principles* → Sendai Framework on DRR	→ ICC → UN HRC → Global Forum on DRR	Disasters: → Sendai follow-up for disasters → UNFCCC Task Force on Displacement Conflict: → No processes of significance Accountability: → ICC → UN HRC investigations
Regional		
→ Africa: Kampala Convention	→ Regional human rights mechanisms	Prevention: → IACtHR for conflict → Some regional DRR institutions and mechanisms Accountability: → Human rights mechanisms
National		
→ IDP and DRR policies, strategies or laws in some countries	→ Domestic courts → National human rights institutions in some countries	Prevention: → A few laws, policies and strategies Accountability: → A few laws, policies and strategies
Subnational or local		
→ Not applicable	→ Local governments or traditional leaders	Prevention: → Community-based initiatives Accountability: → No processes of significance

☐ Satisfactory ☐ Significant gaps ☐ Insignificant or not applicable

Source: Author.

Notes: DRR = disaster risk reduction; IACtHR = Inter-American Court of Human Rights; ICC = International Criminal Court; IDP = internally displaced person; UNFCCC = UN Framework Convention on Climate Change; UN HRC = UN Human Rights Council.

Nevertheless, some important efforts to build international momentum exist. The GP20 Plan of Action, developed by the SR on IDPs, the UNHCR and the UN Office for the Coordination of Humanitarian Affairs on the occasion of the twentieth anniversary of the *Guiding Principles*, aims to galvanize action to prevent internal displacement, protect IDPs and achieve durable solutions and identifies the need for national law and policy on internal displacement as one out of four strategic priorities (GP20 2018, 3). Presently, some countries are suggesting the creation of a high-level panel on internal displacement to advise the United Nations on how to strengthen action addressing internal displacement.

With regard to *processes*, the work of the Inter-Agency Standing Committee (IASC), the discussion of reports submitted to the HRC by the SR on IDPs and other special procedures provide opportunities to discuss specific aspects and contexts of IDP protection and assistance at the global level. However, the IASC is limited to international humanitarian partners, with no participation by affected states. Discussions at the HRC involve diplomats, rather than government officials with technical expertise and experience on displacement issues. Meaningful conversations at the international level require more in-depth analysis and exchange among those who know the issues from both a technical and a diplomatic perspective.

Meetings by the UNHCR Executive Committee (ExCom) would be a particularly relevant forum for more productive discussions. The UNHCR is authorized "on the basis of specific requests from the Secretary-General or the competent principal organs of the United Nations and with the consent of the concerned State, to undertake activities in favour of internally displaced persons" (UNHCR 1992, para. q). It also leads the Global Protection Cluster, co-leads the Global Shelter Cluster with the International Federation of Red Cross and Red Crescent Societies and co-leads the Global Camp Coordination Camp Management Cluster with the International Organization for Migration. Despite this, internal displacement is rarely discussed at ExCom meetings. The only IDP specific ExCom conclusion was adopted in 1994 (UNHCR 1994). Since then, specific references to IDPs (UNHCR 2006; 2016) remain very rare. To have internal displacement as a standing agenda item with an annual or biannual ExCom conclusion could be one possibility to create a

forum for sustained discussion among relevant stakeholders, provided that development actors and countries particularly affected by internal displacement participate in these discussions.

At the *operational* level, multiple problems persist despite significant improvements. In 2014, a study found that "the overall international response to IDPs has improved over the past decade" and that the 2005 "humanitarian reform has made a difference in improving the effectiveness of international response. Coordination mechanisms have been established where none existed before. There is more awareness of the specific needs of IDPs by Humanitarian Coordinators and international agencies. There is greater understanding that protection must be part of the humanitarian response for IDPs; requiring not only the commitment of the mandated protection agencies, but all humanitarian organizations. Funding mechanisms have improved, and the importance of funding protection is recognized" (Ferris 2014, 12).

This finding is still true, as are the study's recommendations to focus more on building governments' response capacity and to further consolidate humanitarian reform efforts (ibid., 15).

The humanitarian needs of IDPs are relatively well addressed in most situations. However, humanitarian action is still highly focused on outputs instead of outcomes, and often reflects the mandates of multiple agencies and organizations rather than the will to collectively achieve results that tangibly improve the overall situation of IDPs (Kälin and Entwisle Chapuisat 2017, 77). Such action all too often focuses on camps and settlements, to the detriment of the large majority of IDPs living with host families or among host communities in urban areas (Cotroneo 2017). Despite a multitude of humanitarian projects that focus on meeting immediate needs and generating quick sources of income, such as through food for work programs, humanitarian actors tend to overlook the crucial importance of building the foundations for *sustainable* livelihoods as early as possible. They also often address housing, land and property issues insufficiently, and may regard the needs of host communities or problems encountered by

Table 2: Protection and Assistance during Displacement

Norms	Institutions	Processes
Global		
→ Human rights → International humanitarian law → *Guiding Principles* → Sendai Framework on DRR	→ IASC → SR on IDPs	→ IASC → Cluster system → SR on IDPs' reports
Regional		
→ Africa: Kampala Convention	→ Regional human rights mechanisms → Regional disaster management institutions	→ No processes of significance
National		
→ Some IDP policies, strategies or laws in about 40 states	→ National refugee commissions → Interministerial bodies → Disaster management authorities	→ Coordination mechanisms
Subnational or local		
→ Some examples in states with high degree of decentralization	→ Local governments → Host communities	→ Coordination mechanisms

☐ Satisfactory   ☐ Significant gaps   ☐ Insignificant or not applicable

Source: Author.

Notes: DRR = disaster risk reduction; IASC = Inter-Agency Standing Committee; IDP = internally displaced person; SR on IDPs = Special Rapporteur on the Human Rights of Internally Displaced Persons.

local authorities[8] as relevant but not part of their core mandate and activities. Despite frequent inclusions of some members of host communities as beneficiaries, most humanitarian projects do not systematically use area-based programming that would look at displacement-affected communities (including host communities and communities having to reintegrate returning or relocated IDPs) as a whole rather than individual beneficiaries.

In conclusion, and as indicated by Table 2, progress has been made in the governance of assistance and protection of IDPs during displacement. Looking to the future, more systematic and sustained efforts at domestic levels are required: to create and enact adequate laws and policies in line with the *Guiding Principles* and other relevant international standards; to set up strong domestic institutions with clear mandates to address internal displacement situations; to strengthen the capacity of authorities at all levels to implement relevant activities; and to provide the necessary resources.

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8   The fact that budget allocations to local governments are in most countries calculated based on regular (registered) residents rather than on the de facto population (including IDPs), is an often-overlooked problem (Kälin and Entwisle Chapuisat 2017, 40).

Humanitarian Access

Humanitarian access to IDPs and their hosts remains a huge challenge, not least because, according to present international law, humanitarian assistance by the international community can, in principle, only be provided with the consent of the country concerned. This requirement creates huge problems whenever such consent is withheld, although the state concerned is unable or unwilling itself to address pressing humanitarian needs.

Some progress has been made in recent years to address this challenge. The Security Council, in Resolution 2139 on Syria, gave credence to Guiding Principle 25(2) on the prohibition of arbitrary denial of humanitarian access, by recalling "that arbitrary denial of humanitarian access and depriving civilians of objects indispensable to their survival, including willfully impeding relief supply and access, can constitute a violation of international humanitarian law" (UN Security Council 2014a). In Resolution 2165, the Security Council found that Syria had arbitrarily withheld consent to relief operations and therefore authorized delivery of humanitarian goods across borders and conflict lines without Syria's consent (UN Security Council 2014b). Similarly, the International Law Commission recognized in 2016 that, in the context of disasters, "consent to external assistance shall not be withheld arbitrarily" (International Law Commission 2016, art. 13).

These important steps have the potential to facilitate diplomatic efforts to gain humanitarian access, but practical problems persist, particularly when the security of aid workers is at stake. These problems go far beyond the issue of internal displacement and, as they are not IDP-specific, cannot be solved with an IDP-specific governance regime. Nevertheless, it is important to continue and strengthen efforts to solidify consensus that states have the *primary responsibility* to assist and protect their IDPs, including by granting humanitarian access when they are unable or unwilling to do so in an adequate manner.

Finding Durable Solutions

According to Guiding Principle 28, states "have the primary duty and responsibility to establish conditions, as well as to provide the means" to allow IDPs "to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country."

As indicated above, protracted internal displacement and the lack of durable solutions are arguably the most problematic aspects of the worldwide internal displacement crisis. Fleeing serious risks and dangers is often a life-saving strategy, and the ensuing emergency relief is an important instrument to sustain such lives; however, while crucial in the moment, these are not long-term strategies. Living for years or decades in protracted displacement triggers prolonged suffering for IDPs living at the margins of society. It also imposes heavy burdens on host communities, local authorities and even affected states (Kälin and Entwisle Chapuisat 2017, 30 and Annex II). To capture these realities, protractedness should not primarily be understood in temporal terms. Rather, it should be viewed as situations in which IDPs "are prevented from taking or are unable to take steps for significant periods of time to progressively reduce their vulnerability, impoverishment and marginalization and find a durable solution" (ibid., 4). Analysis of the underlying causes of protractedness (ibid., 44) and its effects strongly indicates that such displacement is largely a political and development challenge, rather than solely a humanitarian one.

Addressing protracted internal displacement and finding durable solutions to end displacement have moved to the forefront of international discussions since the 2016 World Humanitarian Summit. There, then UN Secretary-General Ban Ki-Moon invoked the Sustainable Development Goals' principle of "leaving no one behind" to set the goal of reducing the overall number of IDPs by 50 percent by 2030. To achieve that, he called for a "fundamental shift in our approach to internal displacement…one that goes from meeting immediate humanitarian needs to one that preserves the dignity and improves the lives and self-reliance of displaced persons" (UN 2016, para. 81). The heads of key UN development and humanitarian organizations and agencies heeded this call by committing to

a "New Way of Working" to achieve collective outcomes jointly attained by humanitarian and development actors together with competent authorities (World Humanitarian Summit 2016).[9]

Since then, discussions on the humanitarian-development nexus and collective outcomes addressing the needs of IDPs in protracted displacement (see "Strengthening the Humanitarian-Development Nexus" below) have started to gain support at the global level as well as in select countries. These initial efforts show that the lack of institutionalized leadership at the country-team level, the lack of incentives for international organizations and agencies to work together rather than to compete over resources, and the increasingly dysfunctional distinction between short-term humanitarian and long-term development funding may seriously jeopardize the implementation of this New Way of Working. Other challenges include the fact that most livelihoods programs begun during the humanitarian phase are not sustainable in the long term and are limited in their ability to help IDPs become (increasingly) self-sufficient over time.

Looking at key *governance* elements for durable solutions, the following picture emerges: At the normative level, international and regional human rights guarantees, such as the freedom to choose one's place of residence, the prohibition of discrimination, or housing, land and property rights, as well as the *Guiding Principles* and the Kampala Convention, provide sound normative frameworks for addressing protracted internal displacement and finding durable solutions. The IASC Framework on Durable Solutions (UN HRC 2009), while not normative in character, provides detailed guidance on a rights-based approach to ending displacement. In some situations, peace agreements or post-conflict strategies also address the issue of durable solutions.[10] While most national IDP laws and policies focus on humanitarian protection and assistance, only some (for example, Republic of Kenya 2013) address durable solutions in detail. A more recent trend is the inclusion of internal displacement in

national development plans (NDPs).[11] This inclusion is encouraging, as NDPs can be a helpful tool to link humanitarian with development action; to facilitate a "whole-of-government" approach to durable solutions for IDPs; to provide a chance for addressing underlying causes of protracted displacement; and to enhance access to financing for solutions-oriented programs and projects.

At the institutional level, the World Bank and regional development banks, as well as the UN Development Programme and UN agencies and organizations (many of which have both humanitarian and development programs), have the capacity and general expertise, in principle, to support governments and communities in addressing and preventing protracted displacement. However, their engagement on this issue is still limited to parts of the organization rather than being engrained across the different departments and bureaus. At domestic levels, some countries have designated special authorities in charge of durable solutions,[12] but arrangements that involve all relevant line ministries may be more effective.

Overall, solutions-oriented governance is the weakest element of governance in the area of internal displacement (Table 3), compared to the other areas (Tables 1 and 2). The large number of IDPs in protracted internal displacement can be attributed not only to the protractedness of many conflicts and the political obstacles to finding solutions but to governance problems as well.

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9   It is important to note that the New Way of Working is not necessarily appropriate for emergency situations amid armed conflict or disasters.

10   See, in particular, Dayton Agreement (1995).

11   Colombia's current NDP set the goal of lifting 500,000 IDPs out of vulnerability by the end of 2018, as defined by a set of seven concrete criteria (Colombia 2015, 522). Somalia's first NDP, while not setting out quantitative goals, aims to "reverse the trend of protracted displacement and substantially reduce the number of IDPs in such displacement by facilitating and supporting durable solutions" (Federal Government of Somalia 2016, 152) and addresses this goal in several of its chapters in order to ensure a "whole-of-government" approach.

12   For example, the Victims Unit in Colombia (Kälin and Entwisle Chapuisat 2017, 94).

Table 3: Durable Solutions to Internal Displacement

Norms	Institutions	Processes
Global		
→ *Guiding Principles* → IASC Framework on durable solutions → Sendai Framework on DRR	→ World Bank → UN Development Programme → Other UN agencies and organizations	→ New Way of Working humanitarian-development nexus discussions
Regional		
→ Africa: Kampala Convention	→ Regional development banks	→ Nairobi Comprehensive Plan of Action for Durable Solutions for Somali Refugees, which not only covers refugees but also returnees and IDPs (IGAD 2017)
National		
In a few countries: → Peace agreements → IDP laws, strategies or policies → NDPs	→ National authorities in charge of reconstruction → implementation of IDP strategies → NDPs	→ Implementation of reconstruction → NDPs
Subnational or local		
→ Some examples in states with high degree of decentralization	→ Local governments → Local communities	→ Implementation of regional or local reconstruction → Development plans

☐ Satisfactory ☐ Significant gaps

Source: Author.

Notes: DRR = disaster risk reduction; IASC = Inter-Agency Standing Committee; IDPs = internally displaced persons; IGAD = Intergovernmental Authority on Development; NDPs = national development plans.

Cross-cutting Governance Challenges

Weaknesses such as the lack of leadership at the global level, the insufficient involvement of development actors to help IDPs become self-sufficient and the insufficient use of existing accountability mechanisms hamper overall efforts to effectively prevent internal displacement, to protect and assist IDPs during displacement and to find durable solutions for them.

Enhancing Leadership at the Global Level

The lack of dedicated global leadership is a cross-cutting governance challenge affecting all phases of internal displacement.

At the UN level, the issue of internal displacement has *no dedicated institutional home*. While multiple

agencies contribute to the response across policy areas (humanitarian, development, human rights, peace and security, DRR and climate change), there is no organization or agency with a comprehensive mandate to protect and assist IDPs. This is also true not only for the UNHCR but also for the International Organization for Migration — increasingly involved in IDP operations — despite their many activities on behalf of IDPs (International Organization for Migration 2017).

Following the abolition of the mandate of the Representative of the Secretary-General on the Human Rights of IDPs in 2010, the United Nations has no dedicated visible face for one of the main humanitarian challenges of the twenty-first century. The Emergency Relief Coordinator (ERC) and (through the ERC) the UN Office for the Coordination of Humanitarian Affairs have been recognized by the UNGA as playing a "central role…for the coordination of, protection of and assistance to internally displaced persons, inter alia, through the inter-agency cluster system" (UNGA 2015c). However, the ERC's mandate is limited to humanitarian action, and the coordination position does not have an operational role, nor does it have the capacity to primarily focus on IDPs. The important mandate of the SR on IDPs is supported by the Office of the High Commissioner for Human Rights, but the role is voluntary and lacks the resources needed to make progress on the issue. As former SR on IDPs Chaloka Beyani succinctly put it: "A Special Rapporteur acting in a voluntary, external and independent capacity is no longer adequate to cope with the complexity and scope of global internal displacement today" (UN HRC 2016a, para. 9). Even more importantly, the role of the SR on IDPs is to report to the United Nations as an independent expert rather than to represent the United Nations.

Similarly, no UN *process* exists where internal displacement issues would be regularly discussed and decided among member states in a coherent and cross-cutting manner,[13] as in other areas of UN activities. While the IASC's so-called cluster system undoubtedly has contributed to more predictable and coherent humanitarian responses (Ferris 2014), particularly in emergency situations, it is often ill-equipped to effectively address serious protection issues and find durable

solutions that require concerted development action alongside humanitarian interventions.

Internal displacement was rather high on the international agenda in the 1990s and the following decade. This attention was manifested in the creation of the mandate of the Representative of the Secretary-General in 1992, the development of the 1998 *Guiding Principles* and the 2005 humanitarian reform that introduced the IASC cluster system and succeeded in making the humanitarian response to internal displacement more effective. Today, international attention has waned. The unwillingness of states to include internal displacement in the 2016 New York Declaration (UNGA 2016c) and the ensuing global compacts on refugees and for migration exemplify this trend.

To strengthen overall leadership at the UN level, internal displacement issues need a clear and visible institutional home within the United Nations that transcends humanitarian action and human rights to bring together the UN system as a whole. The creation of a high-level position would provide an opportunity for higher visibility, a catalytic role for the United Nations at the global level, and sustained advocacy with countries and other relevant actors that neglect their responsibilities toward IDPs (and their hosts) or violate their rights. To be effective, such a position must be established at a hierarchical level that facilitates bridging the institutional gap between humanitarian and development action and, where relevant, also peace and security efforts. The position could take the form of a thematic Special Representative of the Secretary-General (SRSG) (UN HRC 2016a, para. 91) or Assistant Secretary-General (or a high-level position within the Office of the Deputy Secretary-General) with a small staff. The SRSG for international migration is a good example of how such a position can catalyze efforts to address a neglected issue at the global level. Such a position would neither compete with nor make superfluous the position of the SR on IDPs, who remains relevant as an independent expert reporting to the United Nations with a different task.

Strengthening the Humanitarian-Development Nexus

It is increasingly recognized that internal displacement is "a political, human rights, security, developmental and economic challenge" (European Council 2016; UNGA 2017, preambular para. 11)

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13   The discussion of reports by the SR on IDPs and the Third Committee of the UNGA focuses on the human rights aspects of the issue.

and therefore requires a "fundamental shift" in approaching it (UN 2016, para. 81). As highlighted by former UN Secretary-General Ban Ki-moon, "not being left behind means the ability [of IDPs] to return to their homes, to be better integrated into their host communities, or to be settled elsewhere if needed" (ibid., para. 82). He urged the international community "to collectively work towards a clear, ambitious and quantifiable target for reducing new and protracted internal displacement, in a dignified and safe manner" (ibid., para. 83) by 50 percent by the year 2030 (ibid.). The former Secretary-General also encouraged "humanitarian and development actors...to work collaboratively across silos and mandates to implement plans with a clear and measurable collective outcome" to reach this goal (ibid., para. 84).

This "new way of working...[to meet] people's immediate humanitarian needs while at the same time reducing risk and vulnerability" (World Humanitarian Summit 2016) over multiple years through the achievement of collective outcomes was endorsed not only by the outcome of the World Humanitarian Summit but also by the UNGA (2016a, para. 22; 2016b). In the context of addressing protracted internal displacement and finding durable solutions, a collective outcome is a "strategic, clear, quantifiable and measurable" (UN 2016, para. 130) reduction of the vulnerability of IDPs (and their hosts) that increases their self-sufficiency and resilience and enables IDPs to move toward, or even achieve, durable solutions. Such outcomes are collective insofar as they can only be achieved through the combined effort of states, humanitarian and development actors and, where appropriate, peace and security actors, as well as of bilateral and multilateral donors (Kälin and Entwisle Chapuisat 2017, 63). This broader approach to system-wide action also emerged from efforts to reinvigorate the UN development system. Recently, UN Secretary-General Guterres identified six core system functions as essential to effectively implementing the Agenda 2030 (UNGA 2015b), including "direct support and service delivery, particularly in countries in special situations, such as those affected by conflict, displacement and disasters" (UN 2017, annex, para. 20(f)).

After multiple efforts during the past decades to better link humanitarian and development action, implementing the New Way of Working is crucial but challenging. Within the United Nations, it requires fundamentally changing an institutional culture fraught with competition over resources and turf battles between agencies and organizations, rather than one of valuing and rewarding genuine cooperation. A first step toward overcoming this challenge is the transformation of the role of resident coordinators as leaders of UN country teams within the UN development system reforms, giving them enhanced authority over UN country teams (UNGA 2018, para. 7; UN 2017, para. 50). Importantly, this expanded role allows resident coordinators to build a solid nexus between humanitarian and development programming activities, including with respect to protracted internal displacement.

This is, however, not sufficient. Humanitarian funding remains heavily earmarked and short term, with funding periods of six to 12 months. Both humanitarian and development donors also continue to fund individual agencies and organizations, rather than collective outcomes. Until this situation changes, incentives to cooperate will remain weak. Thus, donors should come together to develop funding models for achieving collective outcomes that provide long-term and flexible funding and ensure that individual agencies and organizations receive resources according to their contribution to achieving the common goal. One way to do this could be to build on discussions around the UN development system reforms. The Secretary-General (UN 2017, para. 145) has proposed the development of a funding compact, which was welcomed by the UNGA (2018, para. 29) and called for more predictable and flexible financing to "address such critical global challenges as climate change, human trafficking and displacement and extreme weather shocks" (UN 2017, para. 150). From the perspective of improving responses to internal displacement, a funding compact between member states and the United Nations should include a commitment to prioritize programs and projects that are based on collective outcomes and correspond to the New Way of Working.

Finally, an important change of culture is also required as it relates to the role of IDPs and host communities in the development of country-level programming: all too often, IDPs are poorly informed and consulted and deprived of opportunities to participate in decisions affecting them (UN HRC 2016a, para. 82; UN Human Rights Committee 2017, para. 48). Seeing IDPs — and their hosts — as persons with agency and supporting them as active participants in the

process of finding durable solutions, rather than as beneficiaries of assistance, would go a long way to overcome traditional "care and maintenance" approaches and strengthen IDPs' self-reliance.

Strengthening the Use of Accountability Mechanisms

Accountability, while remaining a huge challenge, is not primarily a governance problem in the sense of a lack of norms and (quasi-)judicial institutions. IDP protection is anchored in human rights law, which has multiple mechanisms available to IDPs and other stakeholders. These include the Universal Periodic Review, the mandate of the SR on IDPs and other special procedures,[14] the UN treaty bodies and regional human rights courts.[15] In addition, arbitrary displacement or attacks on IDPs can be prosecuted as war crimes and crimes against humanity.[16] Problems with accountability are, thus, not due to a lack of norms and institutions, but rather to the insufficient use of existing mechanisms. Accountability could improve if more IDPs knew about their rights; more non-governmental (human rights) organizations focused on not only refugees but also IDPs; UN treaty bodies and regional human rights courts and other relevant mechanisms addressed violations of the human rights of IDPs more often; and accountability systems within the United Nations were strengthened.

Recommendations

The World Refugee Council can play an important role through the following actions:

→ Bringing IDPs back on the international agenda by highlighting the urgency of the problem of internal displacement and the need to improve international governance in this regard.

→ Highlighting that internal displacement is not just a humanitarian issue but also a cross-cutting challenge that requires development and, depending on the context, human rights, peace and security, and DRR measures.

→ Calling for enhanced leadership at the global level through the creation of a dedicated high-level position within the UN Secretariat, at a hierarchical level, that facilitates bridging the institutional gap between humanitarian and development action and also, where relevant, peace and security efforts. The position should be tasked as well with playing a catalytic role at the global level and, at the same time, engaging in sustained high-level diplomacy with states that neglect their IDPs or violate IDPs' rights.

→ Highlighting the need for systematic, sustained advocacy and support for states to develop national laws and policies on internal displacement, and effective institutions for their implementation, that are in line with international standards and address all phases of internal displacement.

→ Advocating for strengthening the humanitarian-development nexus, in particular through

- full implementation of the New Way of Working, in order to enable states to assume their responsibility for IDPs, as well as to achieve collective outcomes to reduce IDPs' vulnerability and dependency on aid, which in turn allows IDPs to move toward greater self-reliance, increased resilience and, ultimately, durable solutions that end their displacement; and

- increased area-based programming, particularly in situations of protracted internal displacement, that would look at displacement-affected rather than individual beneficiaries once the immediate emergency, life-saving humanitarian action is over. Programming should focus on livelihoods, access to basic services, and housing, land and property issues, while also strengthening social cohesion and peace at local levels.

→ Encouraging the UNHCR ExCom to include internal displacement as a standing item in its agenda and to adopt an annual or biannual conclusion on this issue.

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14 Mandates such as those of the Special Rapporteur on adequate housing have regularly reported on IDPs.

15 The IACtHR and the European Court of Human Rights have developed rich case law on many aspects of IDP rights. More recently, the African Commission and Court of Human and Peoples' Rights have adopted important decisions regarding development-induced displacement.

16 Another issue is the accountability of humanitarian actors vis-à-vis beneficiaries, but this is not an IDP-specific problem.

→ Advocating for flexible and more predictable long-term financing that creates incentives for humanitarian and development actors to work together toward collective outcomes, including by ensuring that the envisaged funding compact between member states and the United Nations includes a commitment to prioritize programs and projects addressing internal displacement situations that correspond to the New Way of Working.

→ Calling for enhanced accountability by using existing mechanisms and institutions such as the Universal Periodic Review, examination of state reports and individual communications by UN treaty bodies, regional human rights courts and the ICC, as well as domestic courts; and advocating for stronger support to IDPs and their organizations to facilitate their access to such mechanisms.

In the area of internal displacement, "more of the same" will not bring the necessary changes required to help IDPs rebuild their lives and ultimately achieve durable solutions. Present governance challenges must be overcome to reverse the trend of ever-increasing numbers of IDPs, particularly those in protracted internal displacement. Robust efforts need to be supported by strong political will of UN member states as well as of the UN Secretariat and organizations. The World Refugee Council is well placed to help build the momentum to undertake the necessary governance reforms.

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About CIGI

We are the Centre for International Governance Innovation: an independent, non-partisan think tank with an objective and uniquely global perspective. Our research, opinions and public voice make a difference in today's world by bringing clarity and innovative thinking to global policy making. By working across disciplines and in partnership with the best peers and experts, we are the benchmark for influential research and trusted analysis.

Our research programs focus on governance of the global economy, global security and politics, and international law in collaboration with a range of strategic partners and support from the Government of Canada, the Government of Ontario, as well as founder Jim Balsillie.

À propos du CIGI

Au Centre pour l'innovation dans la gouvernance internationale (CIGI), nous formons un groupe de réflexion indépendant et non partisan doté d'un point de vue objectif et unique de portée mondiale. Nos recherches, nos avis et nos interventions publiques ont des effets réels sur le monde d'aujourd'hui car ils apportent de la clarté et une réflexion novatrice pour l'élaboration des politiques à l'échelle internationale. En raison des travaux accomplis en collaboration et en partenariat avec des pairs et des spécialistes interdisciplinaires des plus compétents, nous sommes devenus une référence grâce à l'influence de nos recherches et à la fiabilité de nos analyses.

Nos programmes de recherche ont trait à la gouvernance dans les domaines suivants : l'économie mondiale, la sécurité et les politiques mondiales, et le droit international, et nous les exécutons avec la collaboration de nombreux partenaires stratégiques et le soutien des gouvernements du Canada et de l'Ontario ainsi que du fondateur du CIGI, Jim Balsillie.

About the World Refugee Council

There are more than 21 million refugees worldwide. Over half are under the age of 18. As a growing number of these individuals are forced to flee their homelands in search of safety, they are faced with severe limitations on the availability and quality of asylum, leading them to spend longer in exile today than ever before.

The current refugee system is not equipped to respond to the refugee crisis in a predictable or comprehensive manner. When a crisis erupts, home countries, countries of first asylum, transit countries and destination countries unexpectedly find themselves coping with large numbers of refugees flowing within or over their borders. Support from the international community is typically ad hoc, sporadic and woefully inadequate.

Bold Thinking for a New Refugee System

The United Nations High Commissioner for Refugees (UNHCR) led a consensus-driven effort to produce a new Global Compact on Refugees in 2018. The World Refugee Council (WRC), established in May 2017 by the Centre for International Governance Innovation, is intended to complement its efforts.

The WRC seeks to offer bold strategic thinking about how the international community can comprehensively respond to refugees based on the principles of international cooperation and responsibility sharing. The Council is comprised of thought leaders, practitioners and innovators drawn from regions around the world and is supported by a research advisory network.

The WRC explores advances in technology, innovative financing opportunities and prospects for strengthening existing international law to craft and advance a strategic vision for refugees and the associated countries.

The Council will produce a final report grounded by empirical research and informed by an extensive program of outreach to governments, intergovernmental organizations and civil society.

À propos du Conseil mondial pour les réfugiés

Il y a en ce moment dans le monde plus de 21 millions de réfugiés, et plus de la moitié d'entre eux ont moins de 18 ans. En outre, de plus en plus de personnes sont forcées de quitter leur pays natal et partent à la recherche d'une sécurité, et elles sont alors confrontées aux limites importantes qui existent quant aux possibilités d'accueil et à la qualité de ce dernier. À cause de cette situation, les réfugiés passent maintenant plus de temps que jamais auparavant en exil.

En ce moment, le système de protection des réfugiés ne permet pas de réagir adéquatement à la crise des réfugiés d'une façon planifiée et globale. Quand une crise éclate, les pays de premier asile, les pays de transit et les pays de destination finale se retrouvent sans l'avoir prévu à devoir composer avec un grand nombre de réfugiés qui arrivent sur leur territoire, le traversent ou en partent. Et le soutien fourni dans ce contexte par la communauté internationale est en règle générale ponctuel, irrégulier et nettement inadéquat.

Des idées audacieuses pour un nouveau système de protection des réfugiés

Le Haut-Commissariat pour les réfugiés (HCR) des Nations Unies a dirigé des efforts découlant d'un consensus et visant à instaurer un nouveau « pacte mondial pour les réfugiés » en 2018. Mis sur pied en mai 2017 par le Centre pour l'innovation dans la gouvernance international (CIGI), le Conseil mondial pour les réfugiés (CMR) veut compléter ces efforts.

Le CMR vise à proposer une réflexion stratégique audacieuse sur la manière dont la communauté internationale peut réagir de façon globale aux déplacements de réfugiés, et ce, en se fondant sur les principes de la coopération international et du partage des responsabilités. Formé de leaders, de praticiens et d'innovateurs éclairés provenant de toutes les régions du globe, le CMR bénéficie du soutien d'un réseau consultatif de recherche.

Le CMR examine les progrès techniques, les occasions de financement novatrices ainsi que les possibilités pour ce qui est de renforcer le droit international et d'y intégrer une vision stratégique pour les réfugiées et les pays concernés.

Par ailleurs, le CMR produira un rapport final fondé sur des recherches empiriques et sur les résultats d'un vaste programme de sensibilisation ciblant les gouvernements, les organisations intergouvernementales et la société civile.