



Humanitarian Aid
and Civil Protection

SESSION 1: WHO ARE IDPS, AND WHAT ARE THEIR SPECIFIC NEEDS?

DEFINITION OF AN IDP IN POLICY-MAKING.

The internationally recognised definition of an IDP is that contained in the 1998 Guiding Principles on Internal Displacement, which were endorsed at the UN world summit in 2005 and have since been replicated in regional instruments such as the Great Lakes Pact's protocol on IDPs and the Kampala Convention.

NOT A STATUS: The Guiding Principles' definition of an IDP is not a legal category, nor does it confer "a special legal status to be granted and eventually possibly revoked".¹ This is because people displaced within their own country remain entitled to the same protection of their rights as the general population. Unlike refugees, they do not need a special status to guarantee their rights. Identifying them as IDPs is intended to guard against their exclusion from human rights protection, in recognition of the specific and heightened vulnerabilities displacement can entail.

Yemen: "All persons whose situation meets this definition shall be considered IDPs, irrespective of whether they have been registered as such and regardless of whether they live in or outside of camps. This definition does not confer any legal status to a person whose situation this definition describes; it simply describes the factual situation of being internally displaced."

National policy for addressing internal displacement in the Republic of Yemen, 2013

INVOLUNTARY AND WITHIN A COUNTRY'S BORDERS: The notion of an IDP is based on two core components: 1) that their movement is forced or involuntary, to distinguish them from economic and other voluntary migrants, and 2) that they remain within internationally recognised state borders, to distinguish them from refugees.

In reality, distinguishing between forced and voluntary migration is not always easy. Slow-onset disasters such as drought and cases of repeated displacement are just two of many situations that can blur the distinction. The emergence of new forms of mobility, in particular "adaptive migration" in response to environmental

¹ Brookings Institution, An IDP No More? Exploring the Issue of When Internal Displacement Ends, April 2002, p.3, available at <http://goo.gl/RvjPoN>

degradation, has prompted further debate on the matter.² Today it is broadly acknowledged that there can be no black-and-white distinction, but rather a continuum.

CAUSES OF DISPLACEMENT: The Guiding Principles set out a non-exhaustive list of the potential causes of internal displacement, including armed conflict, generalised violence, human rights violations and disasters. The Great Lakes protocol on IDPs and the Kampala Convention both expand on this list, adding development projects as a cause, while Kenyan legislation includes political violence. Other countries’ definitions, such as that contained in Azerbaijan’s law on IDPs, are narrower and with it problematic, in that they may result in discrimination.

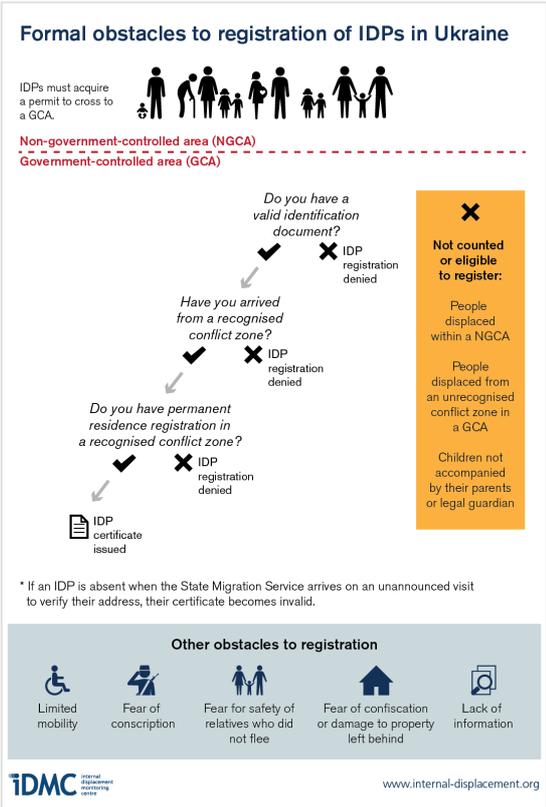
Azerbaijan: "The term Internally Displaced Person (IDP) (person displaced within the country) shall apply to any person who has moved to another place being forced to leave his/her permanent residence within the territory of the Republic of Azerbaijan in connection with military aggression, natural or technological disaster."

Law on Status of Refugees and Internally Displaced persons in Azerbaijan, 1999

It is increasingly acknowledged that displacement tends to have multiple and inter-linked causes, which is one reason it is such a complex issue to resolve. There are often limitations to policies and responses that assume a single cause.

RESTRICTIVE DEFINITIONS OF AN IDP IN NATIONAL INSTRUMENTS: National policies and legislation that provide for registration mechanisms and/or result in a legal or de facto status as an IDP should not result in discrimination or the exclusion of certain groups from entitlements. The following example from Ukraine shows the potential for discrimination that such limitations can create. It should be noted that the country developed its national instrument in 2014 during a conflict that triggered mass displacement in order to better response to the needs of people fleeing its consequences.

Limitations in Ukraine’s definition of an IDP mean that many displaced people are ineligible for registration, and others face obstacles in completing the process. The result is that a significant number of IDPs are unable to access government assistance, and that registered IDPs are the only ones counted or discussed for humanitarian purposes. There are also inconsistencies between the country’s law on IDPs law and resolution 509 on their registration,



² See, for instance, discussion of “returnability” as a test for whether displacement should be considered forced. UN University, Changing Climate, Moving People: Framing Migration, Displacement and Planned Relocation, June 2013. <https://goo.gl/lfTaON>

which have caused confusion about who can register and receive assistance. The law defines an IDP as a “citizen or permanent resident of Ukraine who was forced to flee due to conflict, temporary occupation, generalised violence or mass human rights violations”. Resolution 509 includes foreigners and stateless people who are permanent residents in Ukraine and have been displaced from areas officially listed as outside government control. It also states, however, that children can only be registered by their parents or legal guardians. As such, those in the care of other relatives are not eligible, and there is no provision for state children’s services to register unaccompanied minors. This also means they are excluded from displacement figures. Those most affected are children at school in government-controlled areas, but whose parents remain in areas not under government control, and those not considered orphans or neglected.³

REGISTRATION:⁴ Registration entails the identification of displaced individuals, families and households, and the collection of personal data such as their name, date of birth, sex, family relationships, area of origin, location and special needs.

Whether or not to undertake registration can be a difficult decision. On the one hand, it may be necessary or useful when it serves a specific purpose, for example identifying those entitled to receive benefits such as food relief. It may also improve responses more generally by (a) establishing the number, location and key demographic characteristics of the displaced population, (b) preventing those not entitled to humanitarian assistance from accessing it fraudulently and (c) facilitating the issuing of temporary replacements for personal documentation lost during flight.

On the other hand, registration may not be appropriate if sensitive data cannot be properly managed and protected, the displacement situation is volatile, IDPs have fled to inaccessible areas or the necessary resources and capacities are not available to manage the process. Registration carries risks, such as the misuse of personal data; the exclusion of some IDPs, not only from registration but also from assistance if the two are linked; the creation of unrealistic expectations in terms of assistance or protection; reliance on outdated information if databases are not properly maintained; and reprisals because registration may associate IDPs with particular parties to a conflict.

National authorities that decide to undertake registration should ensure that:

- Procedures are transparent, non-discriminatory, known and accessible to all IDPs and swift so that access to benefits linked to registration is not delayed
- Criteria for registration are clear, non-discriminatory and in line with the Guiding Principles so they do not exclude individuals or groups of IDPs
- Procedures include all IDPs, including those in remote or inaccessible areas and those who are less visible, for example because they are not living in camps
- The process does not create protection risks
- Those without documentation are not excluded, but rather are provided with the documents needed to register

³ IDMC, Displacement figures in Ukraine fail to reflect a complex reality, briefing paper, September 2015, available at <http://goo.gl/dziDrC>

⁴ IDMC/Brookings Institution, National instruments on internal displacement: a guide to their development, 2013, available at <http://goo.gl/QgYor6>

- Any information collected is protected and its confidentiality ensured in order not to expose IDPs to further risks

ADDITIONAL POINTS OF CLARIFICATION:

- The Guiding Principles impose no conditions in terms of how far a person must flee in order to be considered displaced. Some IDPs may move only very short distances, whether through choice or because they have no access to alternative shelter and assistance.
- The Guiding Principles contain no conditions in terms of how long a person must be displaced in order to be defined as an IDP. A brief pre-emptive and voluntary evacuation may fit the criteria, although it may not generate particular needs or concerns. Nor do people cease to be displaced after a set period of time. Many remain IDPs for decades, and in some cases even for generations.
- The Guiding Principles acknowledge that people can become IDPs in anticipation of coercive factors compelling them to move. It can be difficult, however, to determine who constitutes an IDP in such situations, for example when people move as a result of slow-onset disasters, because doing so may be a form of adaptive migration and compulsion is hard to demonstrate.
- An IDP need not be a citizen of the country concerned, but can also be a habitual resident. Habitual residency is usually determined both objectively, in terms of their presence over a certain period of time; and subjectively, in terms of their “intent to remain” or *animus manendi*.
- Some national legislation on IDPs, particularly in Europe, assigns IDPs a particular status. This is often problematic, because it raises issues of determination, the exclusion of de facto IDPs from benefits, discrimination and serious difficulties in terms of revocation. Assigning a status risks creating a permanent category of vulnerable people whose situation will be difficult to resolve.
- The Guiding Principles includes a non-exhaustive list of the causes of displacement. Some are purely descriptive, while others are legal or have legal implications:
 - **Armed conflict:** The existence of armed conflict is a precondition for the application of international humanitarian law (IHL) in addition to human rights law. IHL distinguishes between international and non-international armed conflict.

The few binding IHL norms for non-international armed conflict are the third common article and the second additional protocol of the Geneva Conventions, and customary IHL standards. There are two thresholds.⁵ If the higher threshold is met, the second additional protocol may be applicable. For the lower threshold, it is the third common article.

In reality, an additional category of internationalised armed conflict has emerged, generating complex questions as to which parts of IHL are applicable and to whom. IHL also provides some guidance on qualifying the nature of an armed conflict, and the International Committee of the Red Cross (ICRC) is at the forefront of assessing this.

⁵ ICRC commentary on the second additional protocol to the Geneva Conventions, 1987, available at <https://goo.gl/rBnTXr>

- Generalised violence: This category is included to capture situations that fall below the threshold for non-international armed conflict, typically internal disturbances. It encompasses ethnic, political or inter-communal violence.
 - Human rights violations: This category references human rights law to determine whether a violation has been committed. Forced evictions are a common example of a human rights violation that causes displacement.
 - Natural or human-made disasters: Both types of disaster are referred to in order to avoid debate about causal attribution.
- The annotations section of the Guiding Principles states that they “do not apply to persons who move voluntarily from one place to another solely in order to improve their economic circumstances.”