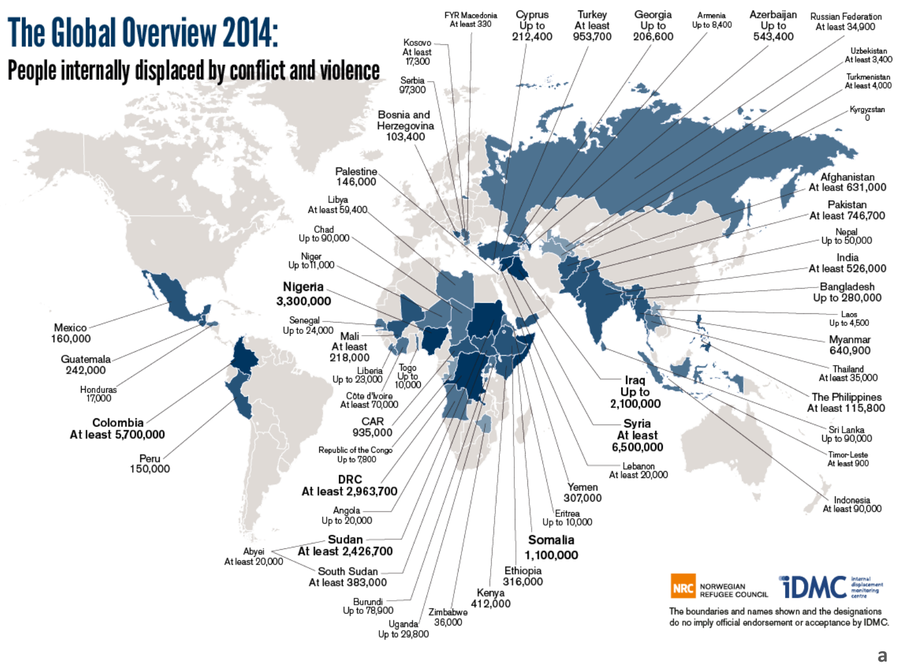
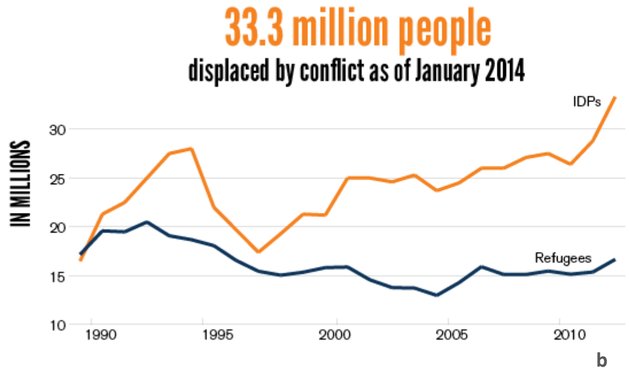
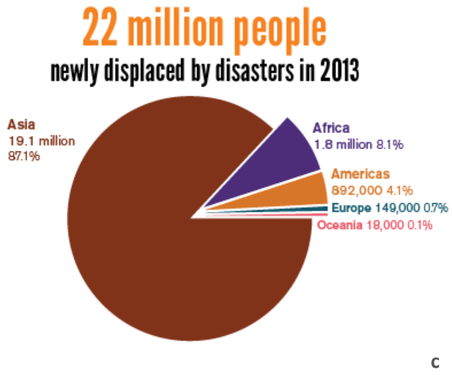
A Legal Right to Return?

Human Rights Protection of Internally Displaced Persons (IDPs) in International Law







a-c Numbers of IDPs by cause of displacement (source: IDMC)

d UN vehicle crosses the Abkhazia-Georgia administrative boundary line (ABL) [Abkhazia side] (source: Geo News)

e Motorised vehicular access across the Abkhazia-Georgia ABL is strictly regulated [Georgian side] (source: SM News Agency)

f-g Borderisation along the Georgia-South Ossetia ABL (source: Ministry of Internal Affairs)

>50% of IDPs are in situations of protracted displacement

IDPs have been '...forced or obliged to flee or to leave their homes or places of habitual residence… and have not crossed an internationally recognised State border'

Causes of displacement (non-exhaustive): armed conflict, situations of generalised violence, human rights violations, or natural or human-made disasters

UN Guiding Principles on Internal Displacement (1998), second introductory paragraph

By definition, internal displacement violates freedom of movement:

ICCPR (A12(1)): 'Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence'

IDPs are unable to travel to certain areas of the State in which they lawfully reside - more precisely, they are **prevented from returning** to the place from which they were displaced, that being their place of habitual residence.

However, despite high-level proclamations of an IDP 'right to return', **there is no legal right to return for IDPs in international law:**

The **Guiding Principles (GPs)** assert an IDP's right to liberty of movement and to choose one's residence but only **during** displacement (Principle 14(1)). While Principle 28 places positive obligations on 'competent authorities' to provide conditions conducive to return, it stops short of providing an explicit right to return that IDPs can invoke to challenge their displacement.

Loizidou v. Turkey (1996) demonstrates that recourse to the ECHR is limited given that it was not drafted with IDP needs in mind.

At present, the Guiding Principles fail to fill the protection gaps that exist in international 'hard' law.

A lack of a legal right to return reveals continuing deficiencies in international law to secure the human rights of IDPs. However, could such a legal right to return be realised? If so, what would it look like and where would it be found?

Areas of current consideration:

1. A right to return **assumes belonging** to *a particular area within a State.* What counts as belonging, and how and to what degree would this need to be justified?
2. **Internal displacement does not necessarily result from State action/inaction**. Is it therefore unreasonable and/or redundant to invoke such a right against national authorities if those authorities cannot reasonably be expected to provide for such a right?
3. **Would such a right be triggered immediately upon displacement?** Invoking any such right while the causes of displacement are ongoing may be both impracticable and irresponsible.
4. The GPs ring-fence internal displacement, protecting rights *during* displacement but doing little to remedy displacement. **Are the GPs therefore the most suitable instrument for a right to return?**

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