

Ten Years of the Guiding Principles on Internal Displacement

December 2008



Forced Migration Review

Forced Migration Review (FMR) provides a forum for the regular exchange of practical experience, information and ideas between researchers, refugees and internally displaced people, and those who work with them. It is published in English, Arabic, Spanish and French by the Refugee Studies Centre, University of Oxford. FMR was launched in 1998 in partnership with the Norwegian Refugee Council.

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Designed by

Art24 www.art-24.co.uk

Printed by

Image Production
www.imageproduction.co.uk
ISO 14001 certified

ISSN 1460-9819

Front cover photo:

Internally displaced Congolese women wait during a food distribution in Kibati, just outside the eastern provincial capital of Goma, DRC. IRIN/Les Neuhaus



FORCED MIGRATION review

from the editors

The international conference on the Ten Years of the Guiding Principles on Internal Displacement ('GP10') – held in Oslo, 16-17 October 2008 – assessed the accomplishments and shortcomings of the Guiding Principles since their launch in 1998. It also sought to generate increased political will to incorporate the GPs into national, regional and global frameworks and to encourage progress towards their practical implementation.

This special issue of FMR reflects discussions at the conference, with shortened versions of some of the conference presentations, and also includes a selection of other articles, most of which present case studies on the application of the Guiding Principles in different countries. Unfortunately, the number of IDP groups around the world is too great for us to acknowledge them all in this 40-page issue but we hope that the articles presented here will be relevant and useful in other settings as well.

We would like to thank Khalid Koser (formerly of the Brookings-Bern Project on Internal Displacement) and Christophe Beau (NRC/IDMC) for their invaluable assistance in preparing this special issue, as well as all contributors. The English edition is online at <http://www.fmreview.org/GuidingPrinciples10.htm> It will also be published in Arabic, French and Spanish.

Best wishes

Marion Couldrey & Maurice Herson
Editors, Forced Migration Review

This special issue has been produced with the support of NRC/IDMC, the Norwegian Ministry of Foreign Affairs and the Brookings-Bern Project on Internal Displacement.

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Foreword

John Holmes

Internal displacement remains one of the most significant challenges facing the humanitarian community.

Twenty-six million people are displaced within their countries due to armed conflict; many more are displaced as a result of natural and human-made disasters and these numbers seem certain to increase as a result of the effects of climate change.¹

Internally displaced persons (IDPs) are less clearly identified and protected than refugees but are often particularly vulnerable. They may lose their property and access to livelihoods; they run a high risk of being separated from family members; they may be discriminated against merely for being displaced; they often lack identity cards, which makes it more difficult for them to access basic services and prevents them from exercising their political rights. They are also often more vulnerable than other groups to abuse by others – as reflected in the high levels of sexual and gender-based violence in IDP settings. The most difficult vulnerability to measure, though, is their loss of dignity and, as the period of displacement increases, their sense of hope.

Following the end of a disaster event or a conflict, ending displacement is often our major and most difficult challenge. Typically, in such periods, national and international attention to the plight of IDPs drops and durable solutions can be elusive. IDPs often receive too little support for too short a period of time to allow them to reestablish their lives in safety and dignity, while recovery activities in the areas where they want to live are all too often slow to be completed.

It is vital that our work to ensure the protection of IDPs is based on their human rights. Human rights not only underpin humanitarian action in protection of IDPs but also distinguish right holders and duty bearers. The Guiding Principles on Internal Displacement² clearly spell out the rights of IDPs and the corresponding obligations of national authorities. Their publication

ten years ago by the former Representative of the Secretary-General on Internally Displaced Persons, Dr Francis Deng, and the former Emergency Relief Coordinator, the late Sérgio Vieira de Mello, was a watershed event in protecting IDPs.

As the articles in this Special Issue of FMR demonstrate, we have come a long way in the past decade. The Guiding Principles have become the accepted international standard for IDPs; an increasing number of states have incorporated them into national legislation; and they have become the benchmark for humanitarian and human rights actors – both nationally and internationally – in dealing with internal displacement. Most importantly, they have made IDPs themselves more aware of their rights.

But there is still a long way to go. Most states affected by internal displacement still do not have domestic laws or policies on IDPs; many IDPs are still unaware of their rights; and there are numerous obstacles to their realisation. I therefore welcome the opportunity afforded by this Special Issue to share experiences, learn lessons, identify gaps and plan for the future. And I call on all governments to assume their responsibilities under the Guiding Principles and on

the international community to increase its support to governments and to IDPs themselves.

John Holmes is the UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator (ERC). For more information please contact dpss@un.org

1. See FMR's recent issue on climate change and displacement at <http://www.fmreview.org/climatechange.htm>

2. <http://www.idpguidingprinciples.org/>

Eldoret IDP camp, Kenya. January 2008.



The genesis and the challenges

Roberta Cohen and Francis M Deng

The need for international standards to protect and assist internally displaced persons arose directly from the explosion of civil wars in the last decade of the 20th century that left tens of millions uprooted within the borders of their own countries.

The 1951 Refugee Convention did not apply to internally displaced persons. Principal responsibility for providing for the well-being and security of IDPs rested with their governments but most were unable or unwilling to assume this obligation. Nor did international organisations and NGOs have clear rules of engagement with the rapidly growing numbers of IDPs in need of assistance. Many thus began appealing for an international document that would define the rights of IDPs and the obligations of governments towards them.

Development of a legal framework for IDPs became one of the main tasks taken on by the Representative of the Secretary-General on Internally Displaced Persons, Francis Deng, following his appointment in 1992. This assignment was fraught with daunting challenges:

- dealing with the sensitivities of governments wary of potential intrusions into their sovereignty
- ensuring that international standards were based on a concept that would promote consensus
- reassuring states that while IDPs came under their sovereign responsibility they had to agree that sovereignty carried with it the obligation to protect and assist these vulnerable populations.

The concept of sovereignty as a form of responsibility became the basis for the normative framework that would be created.

There was concern, especially among humanitarian staff, that singling out one group of people could result in discrimination against others. But the legal team that the Representative assembled found that precedents abound in international

law to provide special protections for disadvantaged groups, whether refugees, minorities, persons with disabilities, women or children. Identifying the rights of IDPs and the obligations of governments was not intended to create a privileged status but to ensure that, in a given situation, IDPs – like others – would be protected and assisted.

The legal team had to consider the most appropriate approach to compiling the law. American lawyers argued for a ‘needs-based’ approach – to identify IDP needs and then examine how the law, including customary law and resolutions, would address them. Others, especially Europeans, argued for a more traditional ‘rights-based’ approach – to look exclusively at hard law¹ to decide what rights IDPs have. Walter Kälin² chaired the process, skillfully bringing the two sides together and merging the various texts. The resulting ‘Compilation and Analysis of Legal Norms’ was presented in two parts by the Representative to the Commission on Human Rights in 1996 and 1998.

Whether the rights of IDPs should be set forth in a declaration, convention or principles was a further difficult decision. Principles were decided upon for three reasons. First, there was no support for a legally binding treaty given the sensitivity surrounding the sovereignty issue. Second, treaty making could take decades, whereas a document was needed urgently. Third, sufficient international law already existed to protect IDPs. What was needed was a restatement of the law tailored to the explicit concerns of IDPs.

How to define IDPs was another major issue. For some, IDPs were exclusively those uprooted by conflict and persecution – people

who would be considered refugees if they had crossed a border. For others, those uprooted by natural disasters and development projects were to be included as well. Because it was recognised that such people were also involuntarily displaced and faced human rights and protection problems, the broader definition won out.

Controversy about the Principles arose not so much in regard to their content as to the process by which they were developed. For the first time, international experts outside the traditional intergovernmental process drafted, reviewed and completed a major international legal document. Fifty independent international experts finalised the Guiding Principles at a conference in Vienna hosted by the Austrian government, one of the Principles’ leading sponsors. The Representative then presented the Principles to the UN in 1998.

Not long thereafter, a small but vocal group of governments – led by Egypt, Sudan and India – began to question the standing of the Principles and to ask whether their development by non-governmental actors would create a precedent. To allow their concerns to be addressed, the Swiss government hosted a series of meetings, beginning in 2001, by the end of which the dissenting states abandoned their reservations and expressed support for the Principles. In particular, they were reassured that the experts involved had not created new law but mostly compiled and restated what had already been negotiated and agreed to by governments. They also were influenced by the many governments in the Group of 77 – a coalition of developing nations³ – who quickly found the Principles to be a valuable tool in dealing with internal displacement in their countries.

Sérgio Vieira de Mello, the then Under Secretary-General for Humanitarian Affairs, took the lead in calling upon UN humanitarian and development agencies and NGO

umbrella groups in the Inter-Agency Standing Committee (IASC) – the primary mechanism for inter-agency coordination of humanitarian assistance⁴ – to welcome the Principles. The IASC disseminated them widely and applied them in the field. The Brookings Project on Internal Displacement⁵ worked with international, regional and civil society organisations around the world to gain international acceptance for them. In 2005, more than 190 states adopted the World Summit Outcome document,⁶ which specifically recognised the Guiding Principles as an

important international framework for the protection of IDPs.

From a process initiated barely ten years earlier, the Guiding Principles have come to fill a major gap in the international protection system for uprooted people.

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Her former co-director, Francis Deng (osapg@un.org), was the UN Secretary-General's Representative on Internally Displaced Persons from 1992 to 2004 and is now Special Adviser to the UN Secretary-General on the Prevention of Genocide.

1. 'Hard law' is a term used by lawyers to describe the legally binding nature of various agreements or provisions which leave little room for discretion or interpretation.

2. Walter Kälin has been the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons since 2004.

3. <http://www.g77.org/>

4. <http://www.humanitarianinfo.org/iasc/>

5. <http://www.brookings.edu/projects/idp.aspx>

6. http://www.un.org/summit2005/presskit/fact_sheet.pdf

Commitments to the protection of IDPs



The Oslo conference on the Guiding Principles included a session on 'Humanitarian actors – commitment to the protection of IDPs'. Panel speakers were UN High Commissioner for Refugees António Guterres, Under Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator John Holmes and Director General of the Red Cross Angelo Gnaedinger:

In the absence of binding instruments, the Guiding Principles have become an extremely relevant protection instrument. We consider them as more than a simple compilation and restatement of legal rules. For us, the Guiding Principles have played a significant role even in shaping our own operational responsibilities in relation to

displaced persons, namely in all the dimensions of protection.

António Guterres

... the Guiding Principles have indeed provided a useful framework to guide the responses of governments, humanitarians and other actors in natural disasters. However, as in other displacement contexts, more needs to be done by all of us to translate them into consistent policy and practice. I reiterate my commitment, and that of my staff, to support all stakeholders, particularly governments, to ensuring that the standards set by the Guiding Principles are met. If we want to stand true to our commitment to end the suffering of the millions who are, and who will be, displaced by natural disasters, there is no other option.

John Holmes

The acronym 'IDP' gives the merest idea of the grim realities that confront us in many parts of the world today. In August alone [2008], more than half a million people have been driven out of their homes as a result of three renewed conflicts: in Georgia, in areas on the border between Pakistan and Afghanistan, and in the southern Philippines. During recent weeks tens of thousands more have had to flee their homes in Sri Lanka, in Somalia, in eastern Congo and in many other places where hostilities and attacks on civilians have continued unabated for years. We are committed to reaching all these people in profound distress, who are in urgent need of basic goods and services, and in need – most of all – of a sense of security and hope.

Angelo Gnaedinger

Achievements, challenges and recommendations

Summary of outcomes of the GP10 Conference: 16-17 October 2008, Oslo

The Oslo conference reaffirmed the Guiding Principles as an important framework for upholding the rights of IDPs and was encouraged by reports from a number of states that the Principles had been incorporated into national laws and policies and that a variety of actors have found them useful in promoting IDP rights.

However, the conference emphasised that increased political and financial commitment is needed to ensure the full protection of IDPs. States are encouraged to develop or strengthen their policies to include: (1) preventive measures to avert displacement, (2) crisis mitigation procedures, to be activated once displacement has occurred, and (3) durable solution frameworks.

There is an urgent need for humanitarian and development actors, governments and financial institutions to work together to ensure durable solutions to displacement. Joint approaches are also required to address the challenges resulting from the increasing scale and complexity of forced displacement, and to ensure that the standards set by the Guiding Principles are met.

Achievements

Participants in the conference emphasised that the Guiding Principles have become a key point of reference for the development of normative frameworks for the protection of IDPs in domestic laws and policies. For example, in Turkey, the government has incorporated the Guiding Principles in its Strategy document and used them as a basis for its Compensation Law. With the help of the UN, the model used to develop Turkey's Van Province Plan of action for IDPs is now being expanded to cover other provinces. Examples from Mozambique and the Maldives were also given, confirming the relevance of incorporating the Guiding Principles into national legislation

in situations of displacement resulting from natural disasters.¹

At the regional level, the Organization of American States and the Council of Europe² have recommended the adoption of the Guiding Principles through national legislation to their Member States. In Africa, the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons includes a legal obligation for signatories to incorporate the Guiding Principles into domestic law.

The essential role of the judicial system and civil society organisations in promoting the Guiding Principles and monitoring commitments and obligations of national authorities was highlighted in the context of Colombia.

During the discussion, it became apparent that the Guiding Principles are operationally valuable for actors engaged in providing protection and assistance to IDPs. From the point of view of humanitarian agencies, the Guiding Principles have shaped humanitarian and protection operations. They also provide the primary reference from which humanitarian and protection standards and practices are developed.³

With respect to displacement resulting from natural disasters, the conference affirmed that the Guiding Principles provide a useful framework for disaster risk reduction, the mitigation of displacement and ending displacement after disasters. In situations of disaster-induced displacement, protection risks are often under-estimated. In disaster-prone countries, the Guiding Principles should be used to build closer partnerships between governments, aid providers and civil society, as part of the disaster prevention framework. IOM noted the role of the Guiding Principles at the onset of a disaster, in serving as a checklist to

develop a response strategy which ensures that all proper planning and response are carried out.

Challenges ahead

Despite considerable achievements, some of which are outlined above, major challenges to the realisation of rights of IDPs remain. The number of people who have been forcibly displaced from their homes is estimated at 1% of the world's population. Moreover, the number of IDPs continues to increase, primarily as a result of the growth in disaster-induced displacement related to climate change but also because of protracted situations of displacement. Protracted displacement usually occurs as a result of unresolved conflicts and lack of political will amongst national governments, as well as insufficient support by international actors. In many countries, significant gaps between policies and practice are observed, especially in relation to durable solutions.

The conference noted that a majority of states affected by internal displacement remain unable or unwilling to take on their responsibilities for protecting IDPs. In the worse cases, the humanitarian space required to

Shar Akitena dries grain in the sun, her first harvest since returning home to Otim, her village of origin in northern Uganda, after years of displacement.



prevent displacement or to provide protection to IDPs is limited as a result of obstruction by governments or non-state actors. In reality, the Responsibility to Protect concept has been of limited value in the protection of human rights of IDPs, as a number of states remain more committed to the doctrine of national sovereignty when it comes to dealing with internal displacement.⁴

It was felt that the current legal and normative protection framework needs to be re-examined in the light of the new categories of forced migrants as a result of climate change-related disasters or long-term environmental degradation.

With an increasing number of IDPs residing in urban areas, states and protection agencies must seek new and appropriate means of providing them with adequate protection and assistance, as their requirements are different from those of people in camp settings or in rural areas. The appropriate durable solutions also need to be considered, as urbanisation affects choices and opportunities. For example, after IDPs have adapted to urban livelihoods, return to rural homes is often no longer an option.

With respect to international protection, humanitarian reform has contributed to better predictability in humanitarian responses. The fact that UNHCR now takes the lead for protecting IDPs in situations of armed conflict has significantly improved leadership of coordination of protection. Nevertheless, as stressed by the Emergency Relief Coordinator,

humanitarian actors risk having their credibility undermined if greater care is not given to ensure equality of attention to different IDP populations in protracted crises.

In situations of disaster-induced displacement, protection leadership remains inadequate at the institutional

level, as the responsibility for international coordination is divided between UNHCR, UNICEF and OHCHR, all of which have concerns about their capacity to take on this additional responsibility.

Recommendations

Incorporation into national legislation

The Guiding Principles should be incorporated into national legislation so as to promote their implementation and improve accountability for the protection of IDPs. The publication of the *Manual for Law and Policymakers on Protecting Internally Displaced Persons*⁵ will be a useful resource for governments as it provides a guide for policymakers on how to bring relevant domestic laws in line with the Guiding Principles in a practical way. National authorities have a responsibility not only to develop legislative frameworks but also to ensure that laws and policies are implemented.

Partnerships

Effective partnerships are necessary in order to meet the twin challenges of preventing displacement and ending displacement. These partnerships should be developed amongst states; between states and civil society; between states and financial institutions; between states, civil society and international protection and assistance agencies; and between international humanitarian agencies and development agencies.

Preventing and ending displacement

More efforts need to be made to prevent displacement, through effective disaster risk reduction and emergency preparedness, and through conflict prevention. In parallel, sustained efforts need to be made to end displacement. Both areas of action should be accompanied by coordinated political commitment of all influential actors, as well as adequate and predictable resourcing.

Durable solutions

Planning for durable solutions must start soon after displacement occurs so as to facilitate the transition from humanitarian assistance to development through effective early recovery strategies. Following the ongoing field testing of the

framework for durable solutions, the focus should be on implementing the framework from an early stage in the humanitarian response.

Political dialogue

Political dialogue, including peace negotiations, needs to ensure that IDPs' voices are represented and heard on all issues which affect them. Experience shows that early and sustained dialogue on issues relating to access to land, housing and property is essential to the identification of durable solutions.

Disaster prevention

In disaster-prone countries, the Guiding Principles should be used to build closer partnerships between governments, aid providers and civil society, as part of the disaster prevention framework. At the onset of a disaster, the Guiding Principles should be used as a checklist to develop a response strategy to ensure proper planning and response.

Urban IDPs

With an increasing number of IDPs residing in urban centres, states and protection agencies must seek new and appropriate means of providing them with adequate protection and assistance, as their requirements are different from those of people in camp settings or in rural areas.

Participation of IDPs

Finally, it is important to develop mechanisms to ensure the participation of IDPs in political processes, in decisions affecting their lives during displacement, and in developing and implementing solutions to bring an end to their displacement. Their participation is a precondition to the implementation of the Guiding Principles.

This is a shortened version of the Chair's Summary, prepared by NRC/IDMC, the Brookings-Bern Project on Internal Displacement and the Norwegian Ministry of Foreign Affairs, online at <http://www.internal-displacement.org/gp10>

1. For more examples, see article on Uganda on p21 and Georgia on p16.

2. See article on p15.

3. See statements by António Guterres, John Holmes and Angelo Gnaedinger on p5. In addition, OHCHR noted that the Guiding Principles had proven useful in a variety of situations and that they had been shared with all its offices.

4. See article on p11.

5. See p39.



Developments in the legal protection of IDPs

Cordula Droege

Ten years ago the International Committee of the Red Cross (ICRC) helped draft the Guiding Principles. How have the Principles contributed to improving protection for IDPs? What gaps remain?

The Guiding Principles were designed to reaffirm existing international human rights law and international humanitarian law – and to “clarify grey areas” and “address gaps”.¹ They were also meant to develop the law, rather than merely reflect existing law, but this emphasis has been dropped over recent years. At the time of drafting, the ICRC insisted that existing law had to be reflected in the Guiding Principles, and so the Guiding Principles take up a number of norms which derive directly from international humanitarian law.

Legal developments over the past decade have not only strengthened and consolidated the law underpinning the Guiding Principles but have also been influenced by them. An encouraging number of treaties have been ratified by an ever greater number of states:

- Both the International Covenant on Civil and Political Rights³ and the International Covenant on Economic, Social and Cultural Rights⁴ have been ratified by some 160 states.
- All states in the world are now party to the Geneva Conventions – the international treaties that contain the most important rules limiting the effects of war.⁵
- Adoption of the Rome Statute of the International Criminal Court⁶ has led to recognition that unlawful deportation and transfer is a war crime in any armed

conflict and a crime against humanity if committed as part of a widespread or systematic attack directed against any civilian population, even outside of an armed conflict.

- The International Criminal Tribunal for the Former Yugoslavia⁷ has recognised that displacements are crimes punishable under customary international law. It has also more precisely defined the term ‘forced’, stating that it is not limited to physical force but rather may include the “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.” The essential

element is that it is “involuntary in nature, where the relevant persons had no real choice.”⁸

Clarification of customary law has helped consolidate the legal framework protecting individuals from, during and after displacement. The ICRC *Customary Law Study*⁹ identifies a number of customary rules of international humanitarian law that must be applied by all parties in all types of armed conflict, international and non-international:

- the prohibition of forced displacement
- the obligation to take all possible measures to receive civilians under satisfactory conditions of shelter, hygiene, health, safety and nutrition
- non-separation of members of the same family unit
- the right to voluntary and safe return



IDPs, Nakuru, Kenya, January 2008.

- the protection of the property of civilians.

The importance of weapons treaties should not be underestimated. Explosive remnants of war are one of the main obstacles to safe return, causing immediate dangers to people's lives and access to their homes, disrupting infrastructure and agricultural production and imposing further burdens on weakened medical systems. The banning of antipersonnel landmines in the Ottawa Convention,¹⁰ the obligation to clear explosive remnants of war in the fifth Protocol to the Convention on Certain Conventional Weapons¹¹ and the recently-adopted Convention against Cluster Munitions¹² all help to reduce challenges for those rebuilding their lives.

At the regional level, the African Union is in the process of drafting a Convention for the Protection and Assistance of Internally Displaced Persons in Africa¹³ which has the potential to contribute to a stronger legal framework across the continent. As several articles in this issue indicate, there have been many efforts to implement the Guiding Principles, in themselves not binding, into national law, mainly thanks to the efforts of the Representative of the Secretary-General on the Human Rights of IDPs, Walter Kälin. The Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons¹⁴ commits member states to enact national legislation to incorporate the Principles fully into their national legal systems.

Have the Principles filled grey areas and gaps?

While there have been enormous advances since the process of drafting the Principles began in 1996, some of the gaps or weaknesses – such as the fact that non-state actors are not, traditionally, bound by human rights, and the option of derogation from human rights – that were identified then are still apparent. But much more importantly, the real challenge remains respect for, rather than development of, the law. Francis Deng's finding that "the implementation of existing standards is more urgent than legal reform" is as true today as it was in 1998. There are more structures in place to deal with situations of displacement. States are less prone to deny the existence of displaced people. Displacement is sometimes taken into account in peace agreements and in national action plans. The international community is better organised to provide basic shelter and assistance, even if coordination can still improve.

However, the first cause for displacement in armed conflict is disrespect for the existing rules of war. People are obliged to flee because they are forced out by the parties to the conflict, because they are threatened, subject to extortion, forced recruitment, reprisals or other violations. Or they flee the consequences of fighting, because parties do not spare civilians but indiscriminately attack and destroy homes and infrastructure. Of course, some people flee even when there is no specific violation or threat but

most displacement is induced by the unlawful behaviour of belligerents.

While a lot has been done to raise awareness of the plight of IDPs, we have no cause for complacency. Most displacement could be prevented in the first place if parties respected the laws of war. Those obliged to flee would suffer less if the parties respected the displaced as civilians. Sadly, not much has improved in this area. Humanitarian action can bring some relief but it is up to the parties to conflicts to respect and protect civilians.

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For further information on ICRC's work with IDPs, see 'ICRC Position on Internally Displaced Persons'.¹⁵

1. UN Doc E/CN.4/1998/53/Add.2, 11 February 1998, para 9.

2. Jean-Philippe Lavoyer, 'The Guiding Principles on Internal Displacement: A Few Comments on the Contribution of International Humanitarian Law', 1998 *International Review of the Red Cross* no 324, p476.

3. http://www.unhcr.ch/html/menu3/b/a_ccpr.htm

4. http://www.unhcr.ch/html/menu3/b/a_ceschr.htm

5. <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/genevaconventions>

6. <http://www.un.org/icc/>

7. <http://www.un.org/icty>

8. Prosecutor v Krnojelac, IT-97-25, Trial Chamber Judgment of 15 March 2002, para 475.

9. <http://www.icrc.org/web/eng/siteeng0.nsf/html/customary-law-rules-291008>, rules 129, 131, 132, 133.

10. <http://www.icrc.org/ihl.nsf/FULL/580?OpenDocument>

11. <http://www.icrc.org/ihl.nsf/FULL/610?OpenDocument>

12. <http://www.icrc.org/ihl.nsf/FULL/620?OpenDocument>

13. http://www.unhcr.org/Conference_Special_Events/2008AUSpecialSummit.html

14. http://www.brookings.edu/fp/projects/idp/GreatLakes_IDPprotocol.pdf

15. <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/idp-icrc-position-030706>

What is protection? A definition by consensus

The launch of the Guiding Principles occurred around the same time that the international community at large was beginning to take on the idea of humanitarian protection. Indeed the Principles were instrumental in shaping both the need for the emphasis on protection and the way that it was then defined.

From 1996 to 2000 the International Committee of the Red Cross (ICRC) convened a series of workshops on the protection of civilians. These workshops, involving about 50 humanitarian, human rights and academic organisations/institutions, led to a 'working consensus'¹ – that still holds – on the definition of the term protection as encompassing:

... all activities, aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights, humanitarian

and refugee law). Human rights and humanitarian actors shall conduct these activities impartially and not on the basis of race, national or ethnic origin, language or gender. (1999)

Protection activities may include responsive action, remedial action and environment-building (and may be carried out concurrently) and encompass any activity which:

- prevents or puts a stop to a specific pattern of abuse and/or alleviates its immediate effects;
- restores people's dignity and ensures adequate living conditions through reparation, restitution, and rehabilitation,
- fosters an environment conducive to respect for the rights of individuals in accordance with the relevant bodies of law.

1. <http://www.icva.ch/doc00000663.html>

Assessing the impact of the Principles: an unfinished task

Elizabeth Ferris

The Guiding Principles' objectives were clear but, ten years on, how can we assess their impact?

The late Sérgio Vieira de Mello identified four ways the Principles might benefit IDPs: raising awareness of their needs; mobilising support within the humanitarian community; helping field staff find solutions; and assisting governments to provide for IDPs' security and well-being.

Data from comparative surveys of IDPs before and after the launch of the Principles in 1998 or on public, humanitarian and state awareness of internal displacement issues do not exist. This article therefore measures impact by assessing how governments have adopted laws and policies to promote IDP rights, the rising profile of IDPs on the international humanitarian agenda and the way some IDPs and civil society groups are using the Principles as an advocacy tool.

From the beginning, the Representative of the Secretary-General on Internal Displacement (RSG) emphasised the importance of incorporating the Principles into national laws and policies. Presently, around 20 governments have passed laws or developed policies relating to IDPs, although they do not always follow the text of the Principles. In only three cases – Azerbaijan, Colombia and Georgia – do these pre-date the Principles. Additionally, there have been several attempts to develop regional instruments which incorporate the Principles.

It appears that the Principles, with advocacy and support by the RSGs, have had an impact on national legal standards to protect and assist IDPs. While there are often shortcomings in implementation, governments increasingly see them as a useful framework for addressing issues of internal displacement.

Changing international discourse

Issues around internal displacement have steadily been incorporated into the international policy agenda. A growing body of UN resolutions and documents reference the Principles. These range from reports on the protection of children affected by armed conflict¹ to reports of the Secretary-General on the implementation of the UN Millennium Declaration,² to the Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.³ The Principles have become the accepted international standards for IDPs.

As FMR's recent issue on humanitarian reform explained, the identified gap in response to IDPs was the driving force behind the reform of the humanitarian system which culminated in the launch of the cluster approach in December 2005.⁴ Discussions about IDPs have dominated much of the humanitarian reform agenda from the need for better preparation and selection of Humanitarian Coordinators to financing. Humanitarian agencies are increasingly organising seminars, providing training and incorporating the Principles into their own responses to humanitarian crises.

There is some evidence that the Principles are having an impact beyond that of humanitarian response. A review of 43 peace agreements signed between 1990 and 2008 found that while only ten of the 18 peace agreements signed before 1998 mentioned internal displacement, all but one of the post-1998 agreements have included a reference to IDPs.

Where there are active civil societies and somewhat receptive

governments, the Principles can have a significant impact. When people are aware of their specific rights, they are able to exercise them and successfully advocate on their behalf. As reported in a recent publication by the Brookings-Bern Project on Internal Displacement,⁵ IDPs in Colombia who belong to NGOs and IDP organisations are aware of the Principles and promote their wider dissemination. They have found them useful as a basis for requests made to the authorities and to secure constitutional guarantees of IDP rights. Colombia's highest court, the Constitutional Court, has based several decisions on the Principles. IDPs in Sri Lanka have used the Principles to advocate for greater food rations, more timely deliveries of food, clean water and more personal security. In Georgia a group of IDPs appealed to the Supreme Court to challenge discriminatory electoral laws. When the court ruled against them they worked with NGOs on joint advocacy, persuading the government to bring laws into line with relevant provisions in the Principles. US human rights groups have used the Principles to draw attention to the shortcomings of the government's response to the needs of those displaced by Hurricanes Katrina and Rita in 2005.

However, lack of awareness of the Principles is still an issue in many contexts, mitigating their effectiveness as an advocacy tool for IDPs themselves, national NGOs and international agencies. As Roberta Cohen says: "Knowledge and dissemination of the Principles, however, are not sufficiently widespread. Of the 528 IDPs interviewed in South Asia [for this project], the interviewers found that international principles, norms, and laws do not reach most IDPs; only one third had knowledge of the Principles.⁶ In Bangladesh, 97% of the IDPs interviewed had no knowledge of the Principles. In Nepal,

25% had heard of the Principles through newspaper reports, radio and TV. In Juba, southern Sudan, there was no knowledge of the Principles although when IDPs were asked what human rights meant to them, they spoke of access to food, water, health and protection".⁷

While it is difficult to assess the direct impact of the Principles on IDPs, it is fairly certain that they have encouraged governments to adopt laws and policies on internal displacement, have been used by some IDPs as a tool to advocate for

their rights and have provided a legal framework for UN agencies and human rights organisations to promote the human rights of IDPs. What is much less certain is the extent to which the Principles have prevented arbitrary displacement of persons or have contributed to the ability of IDPs to find sustainable solutions to their displacement. The challenge for the coming decade is to ensure that IDPs are aware of their basic human rights and that they see the Principles as a useful tool in promoting the exercise of these rights.

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1. <http://www.un.org/children/conflict/english/reports.html>
2. <http://www.un.org/millenniumgoals/reports.shtml>
3. <http://www.hrw.org/campaigns/race>
4. <http://www.fmreview.org/humanitarianreform.htm>
5. Roberta Cohen, *Listening to the Voices of the Displaced: Lessons Learned*, Washington, DC: Brookings-Bern Project on Internal Displacement, 2008. http://www.brookings.edu/reports/2008/09_internal_displacement_cohen.aspx
6. 'Voices of the Internally Displaced in South Asia', Mahanirban Calcutta Research Group, 2006, p14, 24. <http://www.mcrg.ac.in/Voices.pdf>
7. Daniel L Deng, 'Voices of the Displaced – Sudan Project' (unpublished), p50.

Guiding Principle 22(b)

Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights... The right to seek freely opportunities for employment and to participate in economic activities.

"We do not want more humanitarian aid; we want income from jobs," says an IDP interviewed in Colombia. Half-way across the world an IDP woman in Abyei, Sudan echoes the same sentiment: "What we will grow is better than the relief given to us."

Indeed, whatever the country, IDPs yearn for jobs in cities or to be working the land so that they can have stable incomes. In Sri Lanka, access to livelihoods is a major concern for IDPs returning to their home areas. In Nepal, of the IDPs interviewed, 61% complained of economic/employment-related problems, and in Bangladesh, 58% marked economic concerns as their main problem for survival. In Assam in India, IDPs identified lack of work opportunities as a major problem.

Training and income-generating projects are few and far between for IDPs. In Juba, the capital of southern Sudan, IDPs

complain that "Education and training programs for IDPs are non-existent" and "there have been intentions but no follow-up." In Colombia, only a small number of those interviewed have received help to improve their skills or vocational training. The government did have a programme for promoting micro-businesses to help IDPs earn a living and reintegrate effectively but for most IDPs developing a successful project proposal in the business sector prove too difficult. Moreover, as they point out, credit is difficult to repay. In Bosnia, problems also arise with credit programmes. Returning IDPs who need financial assistance find that the high interest rates of many micro-credit programmes deter self-employment initiatives in urban areas. Creating livelihood opportunities for the vast majority of IDPs remains a major challenge.

Interviews carried out by the Brookings-Bern Project on Internal Displacement. See Brookings-Bern Project report 'Listening to the Voices of the Displaced: Lesson Learned' at http://www.brookings.edu/reports/2008/09_internal_displacement_cohen.aspx

The Guiding Principles and the Responsibility to Protect

Erin Mooney

At the GP10 conference, several speakers invoked the 'responsibility to protect' and recommended closely linking it to the Guiding Principles and with the fate and situation of the millions of IDPs. What might making this connection bring, conceptually and concretely, to the protection of IDPs?

The Responsibility to Protect (R2P) asserts that sovereign states have a responsibility to protect their populations from genocide and

other mass atrocities but that when they are unable or unwilling to do so, a responsibility of the broader community of states also comes into

play. Coined in 2001, the concept of R2P emerged from the International Commission on Intervention and State Sovereignty (ICISS). This was convened to forge international consensus on humanitarian intervention after the experience of the 1990s, when intervention had proven intensely controversial, "both when it has happened – as in Somalia, Bosnia and Kosovo – and when it

has failed to happen, as in Rwanda.”¹ ICISS re-framed the language and tone of debate by no longer speaking of a **right** of outsiders to intervene but a **responsibility** – in the first instance, of the state concerned – to protect its own population. R2P prescribed a broad package of measures, including not only the responsibility to **react** to protect populations from grievous harm but also the responsibility to **prevent** such situations and to **rebuild** in their aftermath.

Heads of state who assembled at the 2005 World Summit unanimously endorsed the concept of R2P, agreeing to its relevance to address genocide, war crimes, ethnic cleansing and crimes against humanity, and specified that: (1) each individual state has the responsibility to protect its population from these crimes; and (2) the international community, acting through the UN, has the responsibility to do so when “national authorities are manifestly failing to protect their populations” from these crimes, if necessary by taking collective action, including the use of military force.² UN Security Council Resolution 1674 (2006) subsequently reaffirmed this commitment and the concept of R2P.

The duty to prevent and respond to genocide, war crimes and crimes against humanity of course predates R2P by more than half a century. Even so, R2P represents a breakthrough in that it breathes new life into these long-standing commitments, in particular by buttressing accountability among states and the international community to fulfil these protection obligations in practice.

The relevance to IDPs

Situations of genocide, war crimes, crimes against humanity and ethnic cleansing inevitably force people into displacement. The link between R2P and IDPs, however, extends beyond causal factors.

In fact, the intellectual roots of R2P run deep, extending to and very much inspired by international approaches to IDP protection introduced a decade earlier. In particular, the concept of ‘sovereignty as responsibility’, which is at the core of R2P, has a pedigree traceable to the earliest days of IDP protection advocacy. A principal

architect of R2P recently credited Roberta Cohen, working on IDPs with the Refugee Policy Group in 1991, as the first to spell out that “sovereignty carries with it a responsibility on the part of governments to protect their citizens.”³ When the advocacy campaign she spearheaded succeeded with Francis Deng’s appointment in 1992 as Representative of the UN Secretary-General on Internally Displaced Persons, Deng continued in this vein, asserting in his first report:

“No Government can legitimately invoke sovereignty for the deliberate purpose of starving its population to death or otherwise denying them access to protection and resources vital to their survival and well-being. [...] if a Government is incapable of providing protection and assistance then the international community should act, either on the invitation of the host country or with international consensus, to fill the vacuum.”⁴

Coining the phrase ‘sovereignty as responsibility’,⁵ Deng then made this concept his signature calling card in carrying out all aspects of his mandate. He used it to particular advantage in opening channels for constructive dialogue with governments the world over on what fundamentally is an internal, and therefore politically highly sensitive, matter. Much more than a diplomatic nuance and tactic, sovereignty as responsibility also simply made sense. For IDPs and other people still within their own country, protection ultimately entails securing access to effective national protection.

Key similarities and differences

The concept of sovereignty as responsibility at the core of R2P also informed and underpins the Principles. As a general principle, “national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction” (Principle 3). The Principles then proceed to spell out what this responsibility requires in all phases of displacement: from prevention to protecting populations against atrocities and abuse of rights, to ensuring durable solutions – a comprehensive approach which calls to mind and could help guide implementation of R2P’s three-fold

responsibility to prevent, to react and to rebuild.

At the same time the Principles make it clear that protecting IDPs is the responsibility not only of authorities in-country but also of the international community, especially when national authorities are unable or unwilling to fulfill their role. The Principles reaffirm that “all authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law” (Principle 5). It is incumbent upon states to accept international assistance if they are unable or unwilling to provide the assistance that IDPs require (Principle 25). Further, international humanitarian organisations and other appropriate actors providing assistance are to “give due regard to the protection needs and human rights of IDPs and take appropriate measures in this regard” (Principle 27).

Genocide, ethnic cleansing and acts constituting war crimes and crimes against humanity – the four trigger scenarios for R2P – are all expressly prohibited in the Principles, based on obligations under international law. However, unlike R2P as endorsed by the World Summit, the protection prescribed by the Principles is by no means limited to these same circumstances. The Principles unequivocally recognise that people become IDPs due to a range of causes including armed conflict, generalised violence, violations of human rights, natural or human-made disasters, and large-scale development projects. With R2P, as the experience in the aftermath of Burma’s Cyclone Nargis made evident, there is no consensus even among the chief architects of R2P as to whether it can be applied in the case of overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or call for assistance, and there is or might be significant loss of life.⁶ Moreover, the Principles define protection in terms not only of physical safety but also of the broad range of civil, political, economic, social and cultural rights.

A further key difference lies in their fundamental purpose. The Principles were drafted in response to a request

from states, voiced in resolutions adopted by the UN General Assembly and Commission on Human Rights, for a normative framework for the protection of IDPs. Their express purpose is to provide guidance on the rights of IDPs and the responsibilities of states and other authorities towards them. Recognised by the 2005 World Summit as the authoritative statement on the rights of IDPs, the Principles have been incorporated into national laws and policies in numerous countries. In addition to clarifying the relevant legal norms, the Principles also specify some of the concrete actions that realisation of these norms requires, such as issuing replacement personal documentation for IDPs, incorporating women's views and concerns into the design and delivery of assistance, making education and training facilities available in IDP camps, and helping IDPs recover or receive compensation for lost or damaged property.

Anchored in the same bodies of international humanitarian law as the Principles, R2P was developed for a different purpose: to break through a political impasse, specifically on the basic questions of principle and process as to when, how and under whose authority international intervention should occur. That R2P has gained international acceptance and traction is a testament to its contribution towards re-opening dialogue and re-affirming commitments on this critical issue.

Even so, the practical implications of R2P have yet to be developed and remain controversial. The Secretary-General's Special Adviser on R2P points out: "UN member states are united in their support for the goals of R2P but less so on how to achieve them."⁷ UN Secretary-General Ban Ki-Moon, an active advocate of R2P, acknowledges that it is "a concept, not yet a policy; an aspiration, not yet a reality. [...] There is no blueprint for getting the job done."⁸ In the absence of such a blueprint, misconceptions abound; most significantly, the mistaken impression of R2P as "nothing more than military intervention cloaked in political rhetoric remains a road block for many."⁹ As a result, a number of governments, fearing international intrusion, remain prickly about the concept. Under

these circumstances, explicitly linking R2P to internal displacement and the Principles could risk confounding the latter with intervention in internal affairs and undermine the wide acceptance of the Principles that has been so carefully cultivated over the past decade.

To be sure, R2P's proponents have worked hard to explain the broad range of measures that it encompasses, with particular emphasis on preventive measures and building state capacity. Both of these aims also find strong reflection in the Principles, which could thus provide a useful tool and guidance for implementing these aspects of R2P in cases of real or threatened internal displacement. Increasing focus by R2P advocates on prevention and the 'softer' measures such as diplomatic persuasion were used in Kenya to address the post-election violence – the first successful application of R2P. However, it is essential to the aim and legitimacy of the R2P concept to not shy away from confronting cases, such as Darfur, DRC, Zimbabwe and Somalia, where mass atrocities and abuses remain unchecked and a meaningful international protection response is long overdue.

Clearer understanding of R2P's purpose and scope is key to deepening the political buy-in for its application which, in turn, will require the development of practical tools and implementation strategies (the UN Secretary-General has promised to unveil proposals for

operationalising R2P before the end of 2008). Once these elements are put in place, R2P holds tremendous promise as a mobilising tool to reinforce and support realisation of those parts of the Principles concerned with the protection of IDPs from the most serious crimes. In the meantime, whether states and the international community will fulfil their responsibilities – new and old – to protect people in grave peril remains a question urgently on the mind of millions of IDPs.

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2. World Summit Outcome 2005, UN General Assembly Resolution 60/1 (2005), paras 138-139.

3. Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Brookings, 2008), p36. <http://www.brookings.edu/press/Books/2008/responsibilitytoprotect.aspx>

4. UN Doc. E/CN.4/1993/35 (21 January 1993), para 151.

5. Deng et al, *Sovereignty as Responsibility: Conflict Management in Africa* (Brookings, 1996). <http://www.brookings.edu/press/Books/1996/sovrnty.aspx>

6. ICISS p33 and Lloyd Axworthy and Allan Rock, 'Responsibility to Protect? Yes,' *Globe and Mail* (9 May 2008); Evans, pp55-56; and Ramesh Thakur, 'Applying the UN Responsibility to Protect Doctrine too Broadly, to Natural Disasters, Could do More Harm Than Good,' *Yale Global* (19 May 2008).

7. Edward Luck was appointed as Special Adviser with a focus on the Responsibility to Protect in February 2008. See Edward C Luck, *The United Nations and the Responsibility to Protect*, Policy Analysis Brief (Stanley Foundation, 2008), p1. <http://www.stanleyfoundation.org/resources.cfm?id=345>

8. UN doc. SG/SM/11701 (15 July 2008).

9. Brian Barbour and Brian Gorlick, 'Embracing the "Responsibility to Protect": A Repertoire of Measures Including Asylum for Potential Victims', *International Journal of Refugee Law* (2008), p536. <http://ijrl.oxfordjournals.org/>



People fleeing attacks on their villages pitch a makeshift camp on the outskirts of Goz Beida town, Chad, 2006.

Achievements and limitations of the Guiding Principles in Burma

Thailand Burma Border Consortium

While the Guiding Principles have galvanised awareness of and assistance for IDPs in Burma, they have been an ineffective tool for dealing with a predatory military junta.

As FMR's recent issue on Burma outlined¹, large-scale internal displacement has been a reality in Burma since squatters were forcibly evicted from Rangoon and relocated into satellite towns in the 1950s. Only since the introduction of the

displacement. It has now become accepted that displacement might result not only from violence and abuse that have already taken place but also from the need to avoid threats which are yet to occur. This has facilitated understanding of the

done little to alleviate poverty in conflict-affected areas. Communities perceived as opposing the state generally bear a disproportionate share of the costs and are denied a fair share of the benefits.

Recognition that "internal displacement may be caused by a combination of coercive and economic factors"² has also been

important. In Burma much impoverishment and forced migration are due to state-led land confiscation, asset stripping, forced procurement policies, agricultural production quotas, forced labour, arbitrary taxation, extortion and restrictions on access to fields and markets. The compulsory and unavoidable nature of these factors is distinct from the voluntary, profit-oriented 'pull factors' more commonly associated with economic migration.

Given the junta's increasing restrictions on humanitarian space in conflict-affected areas,



A Burmese family heads towards a relief camp near Kungyangon Township, May 2008.

Guiding Principles has there been a common framework for protection and assistance of IDPs. The Principles have proven invaluable in promoting awareness about displacement and mobilising assistance to respond to grave needs. Yet, in Burma, as in some other contexts, the Principles offer little diplomatic leverage when national authorities are unable and/or unwilling to fulfil their obligations.

The Guiding Principles have helped humanitarian practitioners advocate that it is not only proximity to actual fighting but also the broader effects of war that are causes of

involuntary nature of displacement in Burma, applying the Principles regardless of whether people are forced to flee conflict, violence or abuse, or obliged to leave by government orders or out of fear.

The Principles' concern with development-induced displacement has resonated in Burma as state-sponsored development initiatives have often undermined livelihoods and promoted militarisation. By focusing on infrastructure development and commercial agriculture, the junta's Border Areas Development programme has

the Guiding Principles have also helped to mobilise funds for cross-border assistance programmes. They underpin international humanitarian law's assertion that civilians caught in the cross-fire have a right to assistance and that such assistance should not be considered a threat to national sovereignty. Donors listened when experts advised that cross-border aid into Burma is not only justified in international law but should be strengthened.³

The protection dividend of increased awareness in regard to the national authorities fulfilling their obligations

has been limited. The regime has neither recognised its responsibilities for causing displacement nor the requirement to address its consequences. Despite concessions made in the Irrawaddy Delta after Cyclone Nargis struck in May 2008, restrictions on humanitarian access continue elsewhere in Burma and increasingly frustrate efforts to reach conflict-affected IDPs. The weight of evidence suggests that violations of human rights and humanitarian law in eastern Burma could constitute crimes against humanity.⁴ International frustration has been reflected in the highly unusual denunciation of the junta by the International Committee of the Red Cross.⁵

It is now accepted that if national authorities are unable or unwilling to protect against massive atrocities, responsibility for enforcement shifts to the international community.⁶ This shift is required to increase the leverage of the international community when dealing with recalcitrant rights-abusing regimes such as the Burmese junta. The Guiding Principles have put Burma's IDPs on the humanitarian agenda but new tools are required to stop violence and abuse and prevent emerging threats from causing further displacement.

This article was written by the Displacement Research Team (tbbc@tbbc.org) of the Thailand

Burma Border Consortium (www.tbcc.org), a network of 11 international NGOs providing food, shelter and non-food items to refugees and displaced people from Burma.

1. <http://www.fmreview.org/burma.htm>

2. UN OCHA & Brookings Institution, 1999, *Handbook for Applying the Guiding Principles on Internal Displacement*, New York, p5 <http://www.brookings.edu/fp/projects/idp/resources/HEnglish.pdf>

3. Roberta Cohen, 2000, 'Hard Cases: Internal Displacement in Turkey, Burma and Algeria', *Forced Migration Review*, issue 6, <http://www.fmreview.org/FMRpdfs/FMR06/fmr608.pdf>

4. Amnesty International, 5 June 2008, 'Crimes Against Humanity in Eastern Myanmar', ASA 16/011/2008 <http://www.amnesty.org/en/library/info/ASA16/011/2008/en> See also TBBC, October 2008, *Internal Displacement and International Law in Eastern Burma*. <http://www.tbcc.org/idps/idps.htm>

5. <http://www.reliefweb.int/rw/RWB.NSF/db900SID/LRON-74LGRA?OpenDocument>

6. UN General Assembly, 2005 World Summit Outcome Document, UN doc. A/Res/60/1, 24 October 2005, para 138 UN Security Council, Resolution 1674.

Protecting IDPs in Europe

Corien Jonker

Over the past decade the 47-member Council of Europe has put a considerable amount of effort into promoting the Guiding Principles.

Eleven of the 47 Council of Europe¹ member states have a combined population of approximately 2.5 million IDPs. Alarming, only a few hundred thousand have found a durable solution to their displacement over the past ten years and most of these people have rebuilt their lives elsewhere than their areas of origin. Contrary to all expectations, the number of IDPs in Europe has not fallen significantly. So somewhere, somehow, our efforts and policies have failed, despite international human rights and humanitarian norms becoming increasingly more elaborate.

The Council of Europe has long taken an interest in the issue of displaced persons. Its Parliamentary Assembly has adopted various recommendations and resolutions – on issues such as the education of refugees and IDPs in European countries and the humanitarian situation of displaced populations in Turkey, the Russian Federation and CIS countries, south-eastern Europe and the South Caucasus (and, most recently, Georgia). In 2006, at the instigation of the Parliamentary Assembly's

Committee on Migration, Refugees and Population, the Committee of Ministers of the Council of Europe agreed 13 recommendations on IDPs. These Recommendations² do more than just re-state the non-binding Guiding Principles. They underline the binding obligations undertaken by Council of Europe member states that go beyond the level of commitments reflected in the Guiding Principles.

Most European states concerned have established domestic normative frameworks for internal displacement since 1998. However, only three countries – Azerbaijan, Georgia and Turkey – have made significant progress in bringing their IDP legislation into line with the provisions of the Guiding Principles. Paradoxically, these are the countries with the least prospect of return of their IDP populations in the near future because of the lack of political solutions. At the same time, the IDP situation has improved best in the Balkans, where there have been internationally negotiated and monitored agreements and where there have been advances in EU integration.

All Council of Europe member states have acceded to the European Convention on Human Rights.³ Thus each individual IDP under the jurisprudence of a Council of Europe member state is protected by the ECHR and has the right to appeal to the European Court of Human Rights in Strasbourg. Since the mid-1990s, when Russia, the Balkan and South Caucasus states joined the Council of Europe, the Court of Human Rights has issued several judgments relating to internal displacement in the region.

Furthermore, as IDPs remain under the protection of their own country, they are usually entitled to the same rights as any other person. Besides the Convention, there are other Council of Europe instruments that are binding on member states,⁴ and both the Council of Europe and its Parliamentary Assembly have mechanisms to monitor countries' obligations under these instruments. Of particular importance is the little known and much under-used protection mechanism provided by the European Social Charter and the revised Social Charter, whereby international NGOs which have participatory status with the Council of Europe and are listed as having standing with the European Committee of Social Rights can submit collective

complaints irrespective of whether the organisations concerned come under the jurisdiction of any of the State Parties to the Social Charter.

However, there still persists a wide gap between legislation and practice, especially at local level. There is no question that the primary responsibility for protecting displaced persons lies with governments and local authorities. It is at this level that the difference will finally need to be made. National authorities need to be urged to devote resources, expertise and political will to address the specific vulnerability of IDPs. In some cases, the authorities face severe economic constraints and are unable to meet IDPs' need for protection and

assistance, even if the will is there. In other cases, governments clearly lack the necessary political will to protect and help displaced persons.

We need to encourage states to step up implementation of existing legislation and to observe human rights to the letter. We need to enhance the impact of the Guiding Principles by ensuring that they are enshrined in the relevant legislation of all countries. We need binding instruments to hold states and their governments accountable for their breaches of human rights. And above all we need to end ostrich-style politics and instead work towards peaceful, diplomatic, win-win

solutions that will help displaced people return to their homes.

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1. <http://www.coe.int/>

2. Recommendation Rec (2006)6 of the Committee of Ministers to member states on internally displaced persons (adopted 5 April 2006)

3. <http://www.hri.org/docs/ECHR50.html>

4. These include the European Convention for the Protection of National Minorities, the Revised Social Charter, the European Convention on the Exercise of Children's Rights and the European Convention on Action against Trafficking in Human Beings.

Experience of the Guiding Principles in Georgia

Iulia Kharashvili, Ilya Kharashvili and Koba Subeliani

Georgia has made significant strides towards incorporating the Principles in policy and practice.

In August 2008 the Russian-Georgian war made headlines but less attention is paid to the protracted displacement crisis triggered by earlier conflicts in 1991-1993 which caused most ethnic Georgians to leave the secessionist enclaves of Abkhazia and South Ossetia.

Prior to the recent new wave of displacement, the official number of IDPs in Georgia was 222,616. Some 45% live in collective centres – former public buildings, such as hostels, hotels, hospitals and schools. Others continue to live with host families, have rented flats or – in rare cases – have managed to buy their own dwellings.

For many years IDPs lived in limbo, passively watching the political impasse and dependent on the good will of the Georgian authorities. Lack of progress in negotiations around return with the de facto authorities in Abkhazia and South Ossetia made it clear that displaced Georgians needed the right to integrate. In 1996 – two years prior to the launch of the Guiding Principles – Georgia

enacted its own IDP law. Following a visit by Francis Deng, the then-Representative of the UN Secretary-General on Internal Displacement, the law was amended in 2000 to bring it into line with the Principles. Although the Principles were officially accepted by the Georgian authorities, advocacy from IDP and civil society organisations was needed to realise the rights they enshrine. In 2003 the Norwegian Refugee Council created an education module to explain the Principles to local authorities. In 2003 a ruling from the Constitutional Court of Georgia established the rights of IDPs to purchase property without losing their IDP status and entitlement to return and property restitution. IDPs were given the right to vote in local and parliamentary elections.

In December 2005 Walter Kälin – Francis Deng's successor – visited Georgia. Recommendations made in his mission report¹ spurred the Georgian government to develop a holistic IDP State Strategy through the coordinated efforts of state agencies, international organisations and

civil society. Based on the Guiding Principles, the Strategy seeks to create conditions for dignified and safe return of IDPs, support decent living conditions for IDPs and ensure their participation in society. The Strategy identifies key principles on which to base implementation – including the free and informed choice of the displaced, sustainability of outcomes and gender equality.²

New armed conflict has brought new realities. The invasion of Georgia by Russian forces led, according to the UN Flash Appeal, to an additional 128,700 people forced into dependence on humanitarian aid.³ The Ministry of Refugees and Accommodation (MRA) has worked closely with UN agencies, bilateral donors, the Red Cross Movement and other actors. All senior MRA officials have been provided with copies of the Guiding Principles as well as the Brookings-Bern Project's guidance booklet *Addressing Internal Displacement: A Framework for National Responsibility*.⁴ This has helped ensure the humanitarian response has met internationally recognised standards. The immediate, rapid response from government and civil society helped prevent any fatalities during



Reverend László Lehel, director of Hungarian Interchurch Aid, meets people displaced by the conflict in Georgia, September 2008.

displacement and ensure that the basic needs of the displaced were met.

The IDP Women Association, together with other civil society organizations, has played a prominent role in the current emergency. They have:

- organised volunteers to work with newly displaced people in collective centres
- advised the government on minimum standards of humanitarian assistance
- assisted the authorities in communications with international humanitarian agencies and donors
- helped publicise on the international stage the needs of Georgian IDPs.

Russian troops have now withdrawn from villages to the north, from Gori in the east and from some towns in western Georgia, allowing substantial numbers of people to return. Troops remain, however, in Akhalkori district. While it is hoped that the presence of European Union monitors will increase security, the reality is that there are still more than

34,000 IDPs in regions affected by the August 2008 conflict who have few realistic prospects of return. For them, the Georgian authorities have started building some 6,000 new houses in villages in the Shida Kartli region. In the meantime, providing adequate shelter during the winter remains a formidable challenge.

As the IDP State Strategy acknowledges, it is essential that all IDPs – whether from the original or latest caseloads – should have the opportunity to receive equal assistance and durable solutions of their problems. Decisions to return, to move to new houses or to stay temporarily in shelters must be informed and voluntary.

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1. <http://daccessdds.un.org/doc/UNDOC/GEN/G06/120/14/PDF/G0612014.pdf?OpenElement>
2. <http://www.brookings.edu/projects/idp/Laws-and-Policies/georgia.aspx>
3. <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EDIS-7HMPZ2?OpenDocument>
4. http://www.brookings.edu/projects/idp/20050401_nrframework.aspx
5. <http://www.idpwa.org.ge>

Life stories of IDPs

The Internal Displacement Monitoring Centre (IDMC www.internal-displacement.org) with the support of the Panos London's Oral Testimony Programme (www.panos.org.uk/oraltestimony) interviewed IDPs in Georgia and Colombia to record their personal experiences of forced displacement and what it means to be displaced.

IDMC's IDP Voices website (www.idpvoices.org) gives access to a wide range of IDPs' stories and voices in written and audio formats, organised by country and by rights as stated in the Guiding Principles. Books published on IDP voices in Colombia (*Let It Be Known*, published in Spanish and English) and Georgia (*Heavy Burden*, available in Georgian, Russian and English) can also be downloaded from this website.

Regional approaches to incorporating the Guiding Principles

Walter Kälin, the UN Secretary-General's Representative on the Human Rights of Internally Displaced Persons, has – like his predecessor – sought to 'harden' soft law by encouraging states to develop national laws and policies based on the Guiding Principles. A parallel track has been to

work with regional organisations to develop region-wide, binding conventions. While the negotiations may be more lengthy, involving as they do a number of states, the impact may be greater, firstly because several states accede to regional conventions at the same time and secondly because being subject to the scrutiny of a

regional organisation may place greater pressure on individual states to actually fulfil their commitments.

The best examples to date of incorporating the Guiding Principles in regional approaches are in Africa, as discussed in this article by Brigitta Jaksa and Jeremy Smith.

Africa: from voluntary principles to binding standards

Brigitta Jaksa and Jeremy Smith

A continent-wide Convention to protect IDPs in Africa could soon be adopted by the African Union. If sufficiently robust and aligned closely with the Guiding Principles, it would send a powerful signal about Africa's determination to address IDP issues.

With as many IDPs in Africa – 12 million – as in the rest of the world put together, African states have already shown leadership in the area of IDP protection. Signed in 2006, the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons¹ obliges signatory states to adopt and implement the Guiding Principles. The decision by African Union (AU) ministers in 2006 to initiate a process to develop a continent-wide framework on the rights of IDPs raises the prospect of binding standards for Africa as a whole. The Convention for the Prevention of Internal Displacement and the Protection of and Assistance to Internally Displaced Persons in Africa is expected to be approved at a Special Summit of the AU in Uganda in April 2009

The draft Convention is broadly based on the Guiding Principles. IDP advocates welcome it but have a number of reservations.

- The opening clause requiring states to refrain from and prevent discrimination is too

narrow, focusing only on "ethnic, racial or religious" factors, rather than mirroring Guiding Principle 4 which outlaws discrimination of any kind.

- The Convention lacks the positive assertion of Guiding Principle 1 that IDPs "shall enjoy ... the same rights and freedoms under international and domestic law as do other persons in their country." At most, it creates a negative obligation on states to "prevent political, social, cultural and economic exclusion and marginalization, likely to cause displacement."

- Language about "simplified procedures" to restore property to IDPs is vague and may not empower IDP women to recover property in cases where they lack the right to inherit what is considered solely their husband's property.

- The Convention itemises rules of behaviour for non-state armed actors but, by definition, such non-state actors cannot be party to the Convention.

- The Convention, unlike the Principles, directly addresses the issue of development-induced displacement. However, the vagueness of a caveat saying that this applies only to "large-scale" development could allow states to avoid responsibilities. The Convention says nothing about public and parliamentary scrutiny of projects likely to cause displacement.

- Various articles dealing with states' responsibilities to provide protection and humanitarian assistance – or to enable others to provide it – create unease: for each clause strongly laying out standards, another clause potentially undermines the point being made. For example: the Convention requires states to acknowledge the neutrality, impartiality and independence of humanitarian actors but, worryingly, gives states "the right to prescribe the technical arrangements" concerning humanitarian access; a clause gives international agencies only a limited role in assessment of needs and vulnerabilities, meaning that a state could choose to decide that IDPs' needs are being met, whatever the actual situation they face; references to situations when states are unable to protect and assist IDPs sometimes

indicate that states “shall” seek international assistance and sometimes merely that they “may”; and the inclusion of a condition that outside assistance would be sought when “maximum available [state] resources are inadequate” is unhelpful, since it creates a mechanism by which a state can prevent such assistance, even in cases where it has no intention of providing it itself.

- Language about monitoring compliance is vague. The draft envisages the establishment of a Conference of States Parties for the purposes of monitoring and reviewing implementation but does not specify its functions or clarify reporting mechanisms.

A potential means of ensuring compliance is the African Court of Justice and Human Rights – an institution intended to be the “principal judicial organ of the [African] Union” but which is not yet functional. According to the protocol establishing it, the Court has jurisdiction over not only provisions of the African Charter on Human and Peoples’ Rights² but also any other relevant human rights instruments ratified by the states concerned. This means that if a state has ratified the Protocol, the Court would in theory be able to consider issues of a state’s compliance with the IDPs Convention.

Should these reservations be addressed, the Guiding Principles

could be on the cusp of forming the core of the world’s first international legal instrument for the protection of IDPs.

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1. The Protocol, part of the Pact on Security, Stability and Development in the Great Lakes Region, was signed by 11 states, including Sudan, Uganda and the Democratic Republic of Congo, between them home to nearly two-thirds of Africa’s IDPs. http://www.brookings.edu/fp/projects/idp/GreatLakes_IDPprotocol.pdf

2. http://www.achpr.org/english/_info/charter_en.html

Can the Guiding Principles make a difference in Kenya?

Jacqueline Klopp and Nuur Mohamud Sheekh

Kenya has signed the Regional Pact on Security, Stability and Development in the Great Lakes Region¹ which includes legally binding IDP protection protocols based substantially on the Guiding Principles. Potentially, advocates could use the Pact to enhance efforts to assist those still displaced as a result of violence following elections in December 2007.

Prior to the most recent bout of violence in Kenya, small steps were being made in pushing the Kenyan government to address long-standing internal displacement issues. A Task Force on Resettlement was set up and allocated some 1.3 billion Kenya shillings (approximately US \$16.5 million²) in the 2007-08 financial year to buy land on which to resettle the displaced. While there were serious problems with how the task force and resettlement money were handled, it was a step forward. Ratification of the Pact signified acceptance of the Principles as a framework for dealing with internal displacement.

Some 600,000 people were displaced and around 1,500 killed after the election on 27 December 2007. Many of these people had been displaced on previous occasions. Chronicling previous politically induced

displacements in 1992, 1997 and 2002, the Commission of Inquiry into Post-Election Violence described internal displacement as a “permanent feature” in Kenya’s history.³

The National Accord and Reconciliation Agreement signed on 28 February 2008 prioritised dealing with the displacement crisis, mandated an investigation into the post-election violence that caused mass displacement and put together a team to forge a National Reconciliation and Emergency Social and Economic Recovery Strategy. Determined to encourage rapid and premature return, the government announced its intention to close IDP camps situated in stadia and public showgrounds by June 2008. However, IDPs were not adequately profiled or disaggregated into categories according to needs and

as a result of lack of consultation the government failed to recognise the substantial category of people unable or unwilling to return home.

In May 2008, the government launched Operation Rudi Nyumbani (Operation Return Home). To put pressure on IDPs, essential services such as water were cut off – in clear violation of the Guiding Principles. Sums of 10,000 Kenya shillings (approximately \$127) were offered to those who agreed to go back home. IDP associations raised a number of concerns about Rudi Nyumbani, noting the lack of:

- compensation or business support loans
- preparations for security and reconciliation in places of return
- planning for those who did not wish to return or had no access to land
- provision for vulnerable groups such as HIV/AIDS patients and displaced children in foster families and in school

- communication with IDPs about the programme, leaving them with no information about their entitlements.

While some IDPs successfully returned home, many others decided not to return to places where tensions were still high. The Kenyan government claims that over 90% of IDPs have been resettled but it is estimated that up to 220,000 IDPs were still in camps in September 2008.⁴ Many IDPs have ended up in urban slums without any formal support. Community-based organisations and already poor community members are absorbing the cost of assisting

10,000 Kenya shillings return grants were, at times, given to perpetrators of violence. Rudi Nyumbani has been narrowly focused on the Rift Valley, while other places like northern Kenya continue to suffer massive displacements with little recognition or assistance.

The way forward

It was unfortunate that, just as Kenya seemed to be moving towards official endorsement of the Guiding Principles, electoral violence led to such massive new displacement. Without the Principles, however, things would have been worse. Training and workshops have led to wider awareness of the

of the need to embed the Great Lakes Pact into the constitution.

While Kenya has a relatively well-organised National IDP Network and an active civil society, few organisations focus on IDP issues and engage in outreach to policymakers. The UN, donors and regional bodies could do more to stress the Principles in their interaction with the government and to encourage greater public discussion. Capacity building, especially for IDP-focused civil society organisations, is essential.

It is important to challenge the prevailing view among Kenyan policymakers that displacement

issues fall within the realm of humanitarian relief. Over many years this has meant that as episodes of violence and displacement give way to reconstruction the government is left to manage IDP issues. What is urgently needed is sustained policy focus on assisting and reintegrating the displaced through strategic redress, reconciliation and reconstruction initiatives. If displacement is to stop being a recurring theme of Kenyan history, the Guiding Principles, along with the voices of the IDPs themselves, must structure and guide this process.

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Bernard Thomas Barrett

Displaced families prepare meals, Elburgon Primary School, near Molo in Kenya, January 2008.

largely neglected displaced people. The Kenyan National Commission on Human Rights has argued that implementation of Rudi Nyumbani involved violations of the Guiding Principles as IDPs were not consulted on resettlement options.⁵ UNICEF and the Child Welfare Society of Kenya have noted the rise of child-headed households in urban centres as parents fear for their safety in places of return or abandon them out of desperation at being unable to take care of them.⁶ The incoherent application of Rudi Nyumbani lent credence to charges of ethnic favouritism and allegations that the

Principles and the government does claim that its policies are based on recognition of them. Media and civil society are increasingly aware of the Principles and using them to hold the government to account.

Yet clearly much more needs to be done. One of the recommendations of the Commission on Post-election Violence is that the government should create a clear national IDP policy that includes the Guiding Principles as a legal framework. This would be in line with Kenya's obligations under the Regional Pact. It is also important to raise awareness among Kenyan parliamentarians

- [http://www.internal-displacement.org/8025708F004CFA06/\(httpKeyDocumentsByCategory\)/EDDB590CC1BF1FEC1257248002EC747/\\$file/Great%20Lakes%20pact_en.pdf](http://www.internal-displacement.org/8025708F004CFA06/(httpKeyDocumentsByCategory)/EDDB590CC1BF1FEC1257248002EC747/$file/Great%20Lakes%20pact_en.pdf)
- Exchange rate as of November 2008.
- Commission of Inquiry into Post Election Violence, p271. <http://wikileaks.org/leak/wakireport-2008.pdf>
- <http://www.nation.co.ke/News/-/1056/474336/-/tkv656/-/index.html>
- <http://www.irinnews.org/report.aspx?ReportID=80948> and <http://allafrica.com/stories/200810290041.html>
- http://www.unicef.org/infobycountry/kenya_45641.html and <http://www.irinnews.org/report.aspx?ReportID=80267>

Uganda's response to displacement: contrasting policy and practice

Ruth Mukwana and Katinka Ridderbos

An often overlooked aspect of northern Uganda's protracted conflict is that the main driver of displacement was the Ugandan government's decision to force civilians into 'protected villages'. Peace may be in sight but more must be done to make a reality of Uganda's mould-breaking national IDP policy.

Conflict between the Ugandan government and the Lord's Resistance Army (LRA) has displaced an estimated 1.8 million people. The government argued that it had to separate civilians from insurgents in order to reduce the LRA's ability to recruit civilian collaborators and in 2002 the displacement crisis worsened when the Ugandan army, in the course of an offensive against the LRA (Operation Iron Fist), ordered all civilians remaining in 'abandoned villages' to move to 'protected villages', i.e. government camps.

Forced encampment dramatically increased vulnerability. Repeated LRA attacks succeeded because soldiers were often garrisoned in the middle of IDP camps, rather than on the outside as intended. When the LRA attacked a camp, the soldiers' base would be the last point reached by the LRA – meaning that the IDPs themselves bore the brunt of the fighting. The failure of the 'protected villages' policy and the appalling humanitarian conditions in the camps entrenched the feeling of the Acholi people – the main victims of the LRA as well as suppliers of its cadres – that they were politically and socially marginalised. In 2003 lack of national and international response to the massive humanitarian needs in Uganda's IDP camps led the then UN Emergency Relief Coordinator (ERC), Jan Egeland, to describe the humanitarian crisis in northern Uganda as the "biggest forgotten, neglected humanitarian emergency in the world today."

Uganda's National Policy for IDPs was adopted in 2004, following a visit by Francis Deng, former Representative of the Secretary-General on Internal Displacement. Uganda became one of the first countries to adopt a national policy derived from the Guiding Principles, which:

- holistically addresses protection against displacement, during displacement and during return, resettlement and integration
- states that IDPs "have the right to request and receive protection and humanitarian assistance from national and district authorities"
- gives IDPs "the right not to be discriminated against in the fulfilment of any rights and freedoms on the grounds that they are internally displaced"
- urges action to enable IDPs to attain the same educational standards as other Ugandans
- highlights the importance of consulting IDPs, especially displaced women and youth
- has been translated into three local languages – Acholi, Ateso and Lango
- represents a commitment by the government and an endorsed set of standards to which actors can hold the government accountable.

Implementation of the IDP Policy got off to a slow start. Rushed

decentralisation reforms did not give lower tiers of government sufficient resources. Little allowance was made for the fact that local government was in tatters. Local governments came under further pressure as a result of the large influx of humanitarian actors and the subsequent decision by the Inter Agency Standing Committee (IASC) – the main humanitarian coordination mechanism¹ – to make Uganda a pilot country for the implementation of the cluster approach.² Many go-it-alone international actors failed to consult with local authorities. The roll-out of the cluster approach set up parallel structures for the coordination of humanitarian activities. Local governments were sidelined as the international community did little to build government capacity. There was lack of communication between national and local authorities, little consultation with IDPs and failure to allocate resources to implement the policy.

After protracted negotiations brokered by the newly established Government of Southern Sudan, the Ugandan government and the LRA agreed to a ceasefire in 2006. While the LRA has yet to be persuaded to sign a final peace agreement – in part due to the International Criminal Court's indictment of LRA leaders – the security situation in northern Uganda has improved, allowing hundreds of thousands of IDPs to leave the camps. There is much talk about the transition from humanitarian emergency relief to recovery and development but there is confusion about the roles and responsibilities of national and local governments, UN agencies, donors and NGOs.³ The multiple coordination mechanisms created in the earlier phase of the crisis must be streamlined to allow handover of responsibilities to national authorities.



A displaced girl cares for her younger sibling in an IDP camp in northern Uganda.

Paul Jeffrey/Action by Churches Together

With the benefit of hindsight, it would have been better for the international community, having encouraged Uganda to develop a national IDP policy, to strengthen and support government bodies. This might have encouraged a longer-term perspective and helped prepare local authorities to assume responsibilities given them by the National IDP Policy.

Huge efforts are required to guarantee durable solutions to IDPs and all those affected by conflict. Failure to address the root causes of the conflict and to conclude a final peace agreement with the LRA – one of the key conditions for the return of many IDPs – would attest to the government's failure to prevent displacement and create conditions conducive for durable solutions.

The peace process has created an opportunity for the government to

find sustainable solutions for the displaced. While the government has begun a process of closing down IDP camps, it needs to take measures that will enable IDPs to make voluntary and informed decisions on whether to return, integrate or resettle.

In 2005 the Brookings-Bern Project on Internal Displacement convened a workshop in Kampala – hosted by the Ugandan government – to identify the challenges to the implementation of Uganda's IDP policy and work towards practical solutions. The workshop's recommendation are still valid.⁴ The Ugandan government must facilitate IDP returns by removing landmines, increasing police presence in return areas, building infrastructure, making social services available and establishing judicial mechanisms to address criminal offences and land and property disputes. Above

all, the government should tackle the root causes of the conflict and allocate more resources to implement its innovative IDP policy.

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1. <http://www.humanitarianinfo.org/iasc>

2. See FMR 20, <http://www.fmreview.org/humanitarianreform.htm>

3. Oxfam, 'From Emergency to Recovery: Rescuing northern Uganda's transition', September 2008. <http://www.oxfam.org/files/bp118-uganda-from-emergency-to-recovery.pdf>

4. Joy Miller, 'Uganda's IDP Policy', FMR 27, January 2007. <http://www.fmreview.org/FMRpdfs/FMR27/53.pdf>

Guiding Principle 29 and the right to restitution

Rhodri C Williams

The emergence of a right to post-displacement property restitution represents a significant development in human rights law in the ten years since the Guiding Principles were submitted. While Guiding Principle 29 has contributed to the development of this right, significant obstacles remain to its consistent application in displacement settings.

Principle 29(2) states that:

“Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.”

At the time that the Guiding Principles were drawn up, the right of IDPs to reclaim abandoned property was not beyond dispute. Human rights law guaranteed a ‘right of return’ but it was limited to restoring people to the frontiers of their country of origin – a destination often far from their actual homes. Likewise, the right to legal remedies for violations such as property confiscation was defined as a procedural entitlement to a fair hearing, without pre-judging whether any specific substantive remedy such as restitution should result.

Accordingly, while the drafters of the Guiding Principles were aware that durable solutions for IDPs were inconceivable without the possibility of restitution and voluntary return, prevailing legal understandings necessitated a formulation focusing on state duties rather than individual rights. However, important progress on the ground came as a result of the 1995 Dayton Peace Accords, which ended the war in Bosnia and included rights for displaced persons “freely to return to their homes of

origin” and to “have restored to them property of which they were deprived.” The next five years saw a methodical push to restore the property rights of Bosnia’s displaced, resulting in the restitution of some 200,000 homes, the return of up to a million people and the first real precedent for large-scale post-conflict property restitution as of right.

The Bosnia experience helped shape such important developments as the 2006 adoption by the UN General Assembly of ‘Basic Principles and Guidelines’ affirming rights to substantive remedies such as restitution in addition to fair hearings.¹ The most specific support for a post-displacement right to restitution came in 2005 with release of the Pinheiro Principles,² which confirmed restitution “as the preferred remedy for displacement” and a “distinct right ... prejudiced neither by the return or non-return” of those entitled to it. Like the Guiding Principles, the Pinheiro Principles set out to reflect accepted principles of international law and have helped fill an important gap for countries serious about addressing displacement.

The UN General Assembly and Security Council have moved towards recognition of a right to restitution and the Secretary-General has called for a more effective response to post-conflict property issues.³ Restitution has also emerged as an increasingly standard component of conflict resolution, whether directly through peace agreements, as in Darfur and Nepal, or through ad hoc mechanisms in Afghanistan, Burundi, Kosovo and Turkey.

However, the acceptance of restitution in principle has raised new challenges in practice. The last decade has seen few examples of unambiguously successful restitution programmes, leaving Bosnia to represent as much an aberration as a precedent. This failure in implementation results in part from politics. Land and property are inherently valuable assets, and local and national authorities may resist their recovery by IDPs. In frozen conflicts, restitution is usually impossible. Thus, while the Security Council has issued a strong statement in favour of restitution with regard to breakaway regions in Georgia,⁴ the recent incursion by Russia has greatly complicated the chances that it will be respected.

Where political will exists, restitution programmes may demand a level of resources and legal capacity that many countries do not enjoy. In countries such as Afghanistan, where landlessness was widespread prior to displacement, or Burundi, where the population has nearly outstripped the available supply of land, restitution proposals should accommodate the imperative of securing equitable access to land for the population as a whole.

A further significant challenge to restitution efforts is the need to integrate customary tenure systems. In many countries, indigenous or tribal groups hold land in accordance with unwritten rules. While traditional systems should be respected, lack of state recognition and formal documentation often complicate restitution claims. Customary systems are often non-transparent or even discriminatory, complicating efforts to ensure that respect for collectively held customary rights does not harm individuals. This tension is reflected in the Great Lakes Pact’s Protocol on the Property Rights of Returnees,⁵ which affirms the right of women to own property without discrimination as well as the rights of rural and

pastoral communities to special protection of their property but fails to provide clear guidance where traditional inheritance systems discriminate against women.

These complications notwithstanding, a great deal has been achieved. Ambitious restitution plans are under discussion for Colombia and Iraq. Experience of the 2004 tsunami and other natural disasters has led to increased awareness that property rights must be respected

in the wake of all displacement. The promise of Principle 29(2) has yet to be completely fulfilled but it is encouraging that a rule that was once judged to be ambitious is fast becoming a routine part of the response to displacement.

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1. <http://www2.ohchr.org/english/law/remedy.htm>
2. <http://www.cohre.org/store/attachments/Pinheiro%20Principles.pdf>
3. See 'Report of the Secretary-General on the protection of civilians in armed conflict', October 2007
<http://www.un.org/Docs/journal/asp/ws.asp?m=s/2007/643>
4. <http://www.un.org/News/Press/docs/2007/sc9142.doc.htm>
5. http://www.brookings.edu/fp/projects/idp/GreatLakes_IDP_protocol.pdf

Obstacles to realising Guiding Principle 29 in Afghanistan

Megan Bradley

Restoring property to displaced Afghans is a formidable challenge. Given the prevalence of landlessness, overlapping claims and inequitable property distribution, focusing solely on restoring land to its 'original owners' is unlikely to meet the needs of IDPs, returnees and their neighbours.

Principle 29 asserts that: "Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent

possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not

possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation."

Making a reality of this aspiration in Afghanistan is complicated by complex patterns of displacement. In addition to 130,000 IDPs in 'protracted' displacement in the south and southwest, unknown numbers have been displaced in recent years due to conflict, human rights violations, floods and droughts. The five million refugees who have returned from Pakistan and Iran¹ face a heightened risk of internal displacement, as they often lack the resources and power necessary to reclaim property, or simply have nothing to claim and nowhere to go.

Competition for land is intense in a country with a high birth rate where only 12% of land is arable. Decades of conflict and displacement have



IDP camp,
Kabul,
Afghanistan,
June 2008

produced murky, overlapping claims as successive governments adopted different land policies, often with the goal of rewarding their supporters. Powerful elites have capitalised on the chaos to claim vast swathes of land. Afghanistan's land registration system is largely dysfunctional. Many people lack documentation to back up their claims, while in other cases multiple people hold documents attesting to their ownership of the same piece of land. The courts cannot be relied upon to resolve disputes fairly because of lack of resources and training, and widespread corruption. When authorities do issue fair decisions, these are often not enforced, as law enforcement is extremely limited and impunity widespread. Claimants often resort to violence in order to settle disputes, perpetuating the cycle of displacement and grievance.

Principle 29 is reflected in the 2001 Decree on Dignified Return,² which states that all moveable and immovable property shall be restored to its rightful owner. Similarly, the Afghan National Development Strategy³ “supports the right of all Afghans to return to their homes, [and] repossess property”. Despite these declarations, there are a massive number of unresolved land claims

jeopardising the search for durable returns and sustainable peace. The international community's ‘light footprint’ approach in Afghanistan means that, in contrast with restitution processes in countries such as Bosnia, there has been little support to build local capacity. A Special Property Disputes Resolution Court was set up but soon collapsed due to lack of support, inadequate enforcement capacity, inaccessibility and corruption.

In the absence of formal efforts to uphold displaced persons' rights, IDPs and returnees largely rely on traditional decision-making and adjudication mechanisms such as *shura* and *jirga* to resolve their claims. In theory their decisions are based on *sharia* law but men who participate in them also follow customary laws which may be more conservative, particularly regarding women's rights. Troubling as this is, working with the *shura* and *jirga* is essential to implementing Guiding Principle 29 in Afghanistan, even to a limited extent, as these bodies enjoy local legitimacy, issue prompt decisions and are less corrupt and more accessible than formal courts.⁴

While greater stability is a pre-requisite for addressing land disputes

in the south, it is essential to redouble efforts to tackle the land problem, for land disputes continue to trigger further conflict and displacement. Progress in upholding Guiding Principle 29 is key to preventing further internal displacement. The failure of the Special Court underlines the importance of abandoning one-size-fits-all approaches to redressing displaced persons' land claims and instead crafting practical strategies that respond to local challenges. Until the Afghan government is stronger, creating new institutions will not be the answer. More effort is needed to explore how customary justice mechanisms might uphold displaced persons' remedial rights, as recognised in Principle 29, without fatally compromising other rights, such as the equal treatment of women, that are recognised elsewhere in the Guiding Principles.

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1. <http://www.unhcr.org/afghan.html>

2. <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=SUBSITES&id=3f5d990c4>

3. <http://www.and.s.gov.af>

4. Innovative Norwegian Refugee Council legal aid programmes have helped scores of IDPs to use *shura* and *jirga* to recover their property. See <http://www.nrc.no/>.

Guiding Principle 23

Every human being has the right to education ... To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.

Most IDPs consider education an essential factor in their children's development. “I don't need wealth but I do want education – I want there to be a future for our children,” asserts a Ugandan IDP. In Peru, some IDPs will not return home because of a lack of schools in areas of return, while in Mozambique returning IDPs left their children behind temporarily so they could continue their education. Schooling is seen also as a means of normalising their children's life and as a security measure, providing safety against sexual exploitation, military recruitment and being preyed upon by criminal gangs.

Yet IDP parents in Georgia and Colombia point to lack of school supplies, proper clothing and shoes as factors preventing their children from attending school, while in Indonesia high tuition fees pose problems. In Sri Lanka, parents complain

about safety and transportation problems because there is no school nearby: “Our children have to walk more than 6 km or have to hire an auto. We don't have enough bus services. Because of that our girls can't continue their education.”

In Juba, southern Sudan, parents lament that “Some go to school, whose parents can afford, but most cannot.” Other barriers to schooling include damaged school buildings and supplies, untrained teachers, unfamiliar languages, loss of necessary documents for entry to school, and inability to meet residency requirements.

In several countries IDPs report discrimination against their children. In Sudan, southern Sudanese IDPs complain of religious and racial discrimination. A young IDP man who had gone to school in Khartoum says that “We learned Islamic doctrines in Khartoum by force.” A boy in Colombia had been told by his teacher: “No wonder you are so stupid – you are a displaced.”

Interviews carried out by the Brookings-Bern Project on Internal Displacement. See Brookings-Bern Project report ‘Listening to the Voices of the Displaced: Lesson Learned’ at http://www.brookings.edu/reports/2008/09_internal_displacement_cohen.aspx

Seeking electoral equality for IDP voters

Jeremy Grace and Jeff Fischer

Guiding Principle 22 affirms IDPs’ “right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right.” Despite the clarity of this language, there is no set of universally accepted policies and practices protecting IDP voting rights.

IDPs are protected by the full spectrum of constitutional protections and applicable human rights law, including provisions designed to ensure the right to

The reasons for this discrimination vary. In some situations, the logistics and cost of IDP voting programmes may appear to be beyond the means of election organisers, as was the case

need not undermine the transparency of the electoral process or threaten IDPs’ security or humanitarian needs. In countries from Georgia to Sri Lanka to Nepal, national authorities have amended electoral legislation that specifically discriminated against IDP voting rights. Programmes have been supplemented by engagement of human rights and protection actors in enhancing the capacity of national authorities, support agencies and civil society organisations seeking to protect IDP voting rights.

Recent initiatives include:

- the sustained focus on IDP voting rights in mission reports, statements and initiatives of the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons. See, for example, recent reports from Colombia and Nepal.¹
- increased attention to displacement issues in the election monitoring reports of various intergovernmental organisations, such as the European Commission and the Organization for Security and Cooperation in Europe
- inclusion of chapters on IDP voting rights in the Global Protection Cluster Working Group’s 2007 *Handbook for the Protection of Internally Displaced Persons and Protection of Conflict-Induced IDPs: Assessment for Action*²
- increasing resources for voter and civic education programming in IDP communities by inter-governmental and non-governmental organisations
- research, technical assistance and development of best practices and guidelines for organising displaced voting programmes conducted by the International Organization for Migration under the Political Rights and Enfranchisement Strengthening Project.³



Brett Lacey

IDPs queue outside a makeshift polling centre to vote in Liberia’s August 2005 presidential and legislative elections in Margibi County.

participate in the political affairs of their state on a non-discriminatory basis. National governments have a clear responsibility to take measures necessary to meet these obligations on behalf of IDPs.

However, national authorities and the international community have sometimes tolerated blatantly discriminatory limitations on the voting rights of IDPs. In some cases, these deviations from international election standards include outright disenfranchisement, either through onerous residency and documentation requirements or insufficient electoral and registration facilities. Other common obstacles include a lack of adequate information about electoral processes and failure to provide security.

during the 2005 Liberian elections where IDP participation was possible but limited. This kind of segmentation produces different classes of voters, some of whom have enhanced access to the electoral process. Such an inequality is clearly in violation of human rights practices. In other cases – including the recent Zimbabwe election – disenfranchisement is intentional, and technical and logistical constraints can serve as pretexts to exclude segments of the electorate for political reasons.

Since the development of the Guiding Principles, an emerging body of precedents and programmes to include IDPs in electoral processes demonstrates that IDP voting programmes can be cost-effective and technically feasible. IDP participation

What still needs to be done?

IDP political participation remains inconsistent and work is needed to articulate a clear set of IDP-specific standards on the human rights, operational and security issues associated with elections. Clear guidance, based upon existing human rights commitments, is needed regarding: guaranteeing the right to participate; determining eligibility criteria and documentation requirements; determining residency requirements; providing absentee balloting; protecting IDP security during elections; ensuring that humanitarian assistance and/or property claims are not linked to registration or voting; and providing election-related information. In each of these areas, the fundamental principles of non-discrimination must be respected.

International mediators should pressure national authorities to guarantee IDP voting rights directly in peace agreements, national electoral laws and IDP policies. Once an electoral timeline has been developed, national authorities should work to include IDP-specific provisions in electoral law. Planning for IDP voting requires pro-active measures by election management bodies to consult with IDPs, engage

in scenario planning, identify resources and develop mechanisms to accommodate IDPs' unique needs. Consultations should also include representatives of international humanitarian agencies, as well as relevant ministries (such as the police, census bureaus or social welfare agencies). Donors need to ensure that post-conflict governments build capacity to transparently conduct elections and to provide funds for civil society monitoring groups.

Once registration and electoral processes are underway, donors and international electoral assistance agencies should support programmes aimed at strengthening IDP communities' ability to participate and should remind governments of their obligations to protect the voting rights of all citizens. International observer missions should identify the extent to which displacement issues figure in the political calculations of competing parties and how discrimination may be embedded in electoral code or procedure, and ensure that field observers understand what to look out for.

The Guiding Principles have helped to focus attention on the issue of IDP political rights. Through the strong commitment of Representative of the Secretary-General, the growing

profile of democracy support agencies and humanitarian groups, and the increasing lead taken by IDPs themselves, it has become much more difficult to discriminate against IDPs in the design and administration of elections. However, since IDP voting programmes relate to the mandates of a wide variety of international agencies and national authorities, it is sometimes difficult to sustain attention. The development of a clear, concise and widely accepted set of standards, combined with the identification of a single institutional home for IDP voting issues, would help the international community better support national authorities to implement electoral programmes that conform to fundamental human rights obligations.

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1. <http://www2.ohchr.org/english/issues/idp/visits.htm>
2. [http://www.internal-displacement.org/8025747B0037BAC5/\(httpResources\)/2D90D9C798E63959C12574A6004FA218/\\$file/IDP_handbook.pdf](http://www.internal-displacement.org/8025747B0037BAC5/(httpResources)/2D90D9C798E63959C12574A6004FA218/$file/IDP_handbook.pdf) (provisional release)
3. <http://www.geneseo.edu/~iompress>

Time to apply the Guiding Principles in Nepal

Shiva K Dhungana

While Nepal's new Maoist-led government drags its heels in implementing the country's national policy on IDPs, the needs of those displaced by conflict continue to go unmet.

Despite the fact that many Nepalis had been displaced by natural disasters and development projects, the issues of protection and promotion of IDP rights were not taken seriously until the advent of the Maoist insurgency in the late 1990s. As conflict intensified, the international community drew attention to the protection and assistance needs of victims of forced displacement. Under pressure from the international community, the government grudgingly

acknowledged the problem but defined IDPs solely as those victimised by the Maoist rebels. To the dismay of civil society, the government thus denied IDP status – and access to relief packages – to those displaced by state brutality.

There is no accurate data on the number of Nepali IDPs or those who have fled to India to escape conflict and poverty. At the height of the conflict there were up to 200,000 IDPs. While the signing of

peace accords in 2006 allowed some to return home, the UN estimated there were still 50-70,000 conflict-induced IDPs in December 2007. However, the government has only registered 35,000 IDPs. Generalised fear and distrust that return is a safe option, limited livelihood options, lack of clear government strategies and insecurity of land tenure deter comprehensive return. The Comprehensive Peace Accord signed between the government and the Communist Party of Nepal (Maoist) in November 2006 incorporated an article ensuring the "right to return" of every individual displaced as a result of the armed conflict but the

IDP issue has, nevertheless, remained on the periphery of the peace process.

As a result of momentum following the visit in 2005 of Walter Kälin, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, the government committed themselves to developing an IDP policy. This policy – endorsed in April 2007 and known as the ‘National Policies on IDPs, 2007’ – defined an IDP as “a person who is living somewhere else in the country after having been forced to flee or leave one’s home or place of habitual residence due to armed conflict or situation of violence or gross violation of human rights or natural disaster or human-made disaster and situation or with an intention of avoiding the effects of such situations.” For the first time, the government thus incorporated the Principles into a local policy document. The new policy shifts responsibility for IDP issues to the Ministry of Peace and Reconstruction (MoPR) which has formulated Procedural Directives to actualise the new policy.

Unfortunately, the directives have still not been approved by the cabinet. The authorities are dragging their heels, oblivious to the potential threat which unresolved IDP problems pose to the peace process. The National Human Rights Commission has formulated a strategic plan which calls for “establishment of the truth about disappearance, IDPs and victims of conflict”.¹ However, the Commission has failed to realise the need to protect the rights of people displaced as a result of development projects and natural disasters. The size of this population may now exceed those of conflict-affected IDPs.

Government bureaucrats and the general public remain generally ignorant both about the Principles and the IDP policy. Local officials do not give serious attention to IDP issues. IRIN reports that displaced families feel increasingly neglected since the Maoist-led coalition government was formed in August 2008.²

UNHCR, the Norwegian Refugee Council and number of local NGOs organised events to celebrate the 10th Anniversary of the launch of the Principles. Civil society is lobbying at local level and in Kathmandu to

endorse the Directives, implement the IDP policy and build local-level government-civil society mechanisms to facilitate IDP return, reintegration and reconciliation.

It is unfortunate that government efforts are mostly focused on ‘return’ without any programmes for community-level reconciliation. In the absence of directives, no deregistration system is in place so the scale of IDP return cannot be determined. Government assistance has focused on return to places of origin.

The authorities need to:

- speedily approve the Procedural Directives
- provide relocation assistance to those who cannot, or choose not to, return to former places of residence
- adopt a holistic approach towards IDPs

- ensure cooperation between the Ministry of Home Affairs and the MoPR to establish district-level support mechanisms in rural areas where the MoPR has no functional capacity

- coordinate with civil society and international organisations to identify genuine IDPs, assist them and initiate community-level reconciliation mechanisms

- launch a nationwide advocacy campaign to ensure the effective return, rehabilitation and reintegration of IDPs in their place of choice.

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1. http://www.nhrnepal.org/publication/doc/books/SP_2008-10.pdf

2. <http://www.irinnews.org/Report.aspx?ReportId=81302>

Guiding Principle 24

All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

The criteria for eligibility to receive emergency aid can be highly politicised. For example, IDPs in Colombia complain that to be considered eligible for aid as an IDP, it is easiest to claim to have been displaced by insurgent groups. If they say they have been displaced by government security forces, the authorities reply that “law enforcement does not cause displacement.”

Colombian IDPs also point to what they describe as incomplete aid (such as medical consultations without medications or clinical tests) and uncoordinated aid (for example, land without provision for housing, or education without providing food and nutrition at schools). The overall result is that many IDPs remain in extreme need.

Discrimination is given as another way in which access to emergency aid can be obstructed. Southern Sudanese IDPs in the north say that “Assistance was provided but for Muslims only and not for non-Muslims.” Others complain that because they are “black people” they are denied aid. “We were settled in a desert where there was no water or trees. As time passed, the government saw that we were suffering ... and decided to let the NGOs provide us with small services, like some water and food. But this was not enough to meet our needs.”

Elderly IDPs in particular feel discriminated against in access to aid. In Nepal, most elderly persons say they received no special attention. 84% of the IDPs interviewed in India and more than 68% in Bangladesh also say that no special support is given to the elderly.

*Interviews carried out by the Brookings-Bern Project on Internal Displacement. See Brookings-Bern Project report *Listening to the Voices of the Displaced: Lesson Learned* at http://www.brookings.edu/reports/2008/09_internal_displacement_cohen.aspx*

Returnees in Sierra Leone

Claudena Skran

Over ten years of brutal civil war displaced approximately 4.5 million people, about half Sierra Leone's population. After the conflict ended in 2001, UNHCR facilitated the participation of both returnee refugees and returnee IDPs in community-level reconstruction projects.

UNHCR's response to the Sierra Leonean humanitarian crisis came at a time when the refugee agency was expanding its services to include IDPs. To complement their activities, and in the spirit of Guiding Principle 28, UNHCR launched major programmes for both ex-refugee and IDP returnees. Fifteen per cent of UNHCR programme funds were allocated to Quick Impact Projects (QIPs) to meet the immediate needs of returnees and those who had stayed behind. In 2003-05 about 2,000 Community Empowerment Projects (CEPs) were implemented in all areas of return in a range of sectors, including agriculture, health, water, sanitation and community services.¹

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons 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. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

CEPs were small-scale, community-managed interventions which involved – without discrimination – returning refugees, IDPs and those who had never moved. Nearly half of all CEPs were implemented in Kailahun, the far eastern district where the war originally started and whose population suffered

the highest rate of displacement. UNHCR's implementing partners, primarily international NGOs, provided technical skills and financial management. Decisions about the type of projects to be implemented were made by villagers with input from traditional elders, women and youth. Each project cost no more than \$5,000 and was supervised by a transparently selected management committee. Villagers contributed labour and materials for projects which typically involved repair or construction of schools, village courts, clinics, wells, latrines, rice mills and rice-drying floors.

CEPs provided both symbolic and practical support to returning communities. In Maloma village the reconstructed court building has become the community focal point, actively used to host meetings, dispense justice and hold elections.

Integrating IDPs, refugees and stayees into the same programmes was often challenging. The size of the return package offered to returning refugees proved a contentious issue. When UNHCR and the government of Sierra Leone agreed on equality for all those in need, UNHCR had to reduce the amount of rations normally given to returning refugees.

Refugees and IDPs returned to their villages with different experiences and skills. Many of those who had been in refugee camps in Guinea had benefited from education programmes and had higher levels of literacy than those who had stayed behind. UNHCR tended to choose as implementing

partners those international NGOs it had worked with in Guinea. Returning refugees often had better language skills and knowledge of NGO operating procedures than former IDPs. Ideally, UNHCR should have tried to work more closely with Sierra Leonean humanitarian agencies which had previous experience of working with IDPs.

While UNHCR's reintegration programmes helped to meet the needs of some refugees and IDPs in Kailahun, the main shortcoming of UNHCR's work with IDPs was its limitation to areas where there were high numbers of officially repatriated refugees. Former IDPs in other parts of the country, including the capital city, Freetown, received much less support from international donors and NGOs.² Nevertheless, UNHCR's efforts to include refugees and IDPs in joint community projects show the influence of the Guiding Principles on a major humanitarian agency.

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1. Stefan Sperl and Machtelt De Vriese, 'From emergency evacuation to community empowerment: Review of the repatriation and reintegration programme in Sierra Leone', UNHCR 2005. <http://www.unhcr.org/publ/RESEARCH/420b80384.pdf>

2. See: Claudia McGoldrick, 'Sierra Leone: resettlement doesn't always end displacement', FMR17, May 2003. <http://www.fmreview.org/FMRpdfs/FMR17/fmr17.13.pdf>



Two community elders in a remote village in Peje West Chiefdom, western Kailahun District, Sierra Leone.

Guiding Principle 27 and Philippine typhoon response

Sara McHattie

Oxfam GB's response to the devastation and displacement caused by Typhoon Durian included advocacy with Philippine state, NGO, community and private sector actors to raise awareness of Principle 27 – obliging providers of humanitarian assistance to “give due regard to the protection needs and human rights” of IDPs.

On 30 November 2006 Typhoon Durian affected over 2.5 million people in 13 provinces of the island of Luzon. In Albay province the heavy rain loosened volcanic ash from Mount. Mayon, which cascaded into densely populated communities in

displaced people to allow education to resume, the government decided to build ‘transitional sites’ for IDPs and families that were to be relocated.

The two initial transitional sites were grossly sub-standard. It was clear that government authorities had no awareness of minimum standards of assistance or of the obligations to, and rights of, displaced communities. Sites lacked adequate shelter, water supplies, sanitation facilities, health services, livelihood opportunities and food and non-food distributions. Residents

camp were not primarily due to ill will but to lack of awareness and resources, and so the programme aimed to raise awareness of Sphere Minimum Standards¹ and the Guiding Principles. We hoped that improved understanding of principles of humanitarian response would both raise the standards of the current response and enable local actors to better respond to future crises in the highly disaster-prone Bicol region.

Oxfam partnered with RedR India for Sphere training, the Balay Rehabilitation Centre for Guiding Principles training and an Albay-based NGO, Social Action Centre (SAC). The government/NGO coordination mechanism, called Ayuda Albay, was a key facilitator of this process.

An initial Sphere training in Legazpi for local government officials, UN, NGOs, private sector and community leaders was followed by one in Manila for federal government officials, including senior officials from the National Disaster Coordinating Council and the Department of Social Welfare and Development (DSWD), key private sector contributors to humanitarian responses, NGOs and the UN.

The impact of the training was a rapid shift towards increasingly coordinated and objective-oriented provision of assistance.

The government and NGOs were given a tangible goal to aim for – such as one toilet per 20 people – and a framework against which to measure activities and identify gaps. Communities became more confident in expressing and articulating their needs. Sphere principles have been integrated into the work of the PDCC and the DSWD.

Guiding Principle training in Legazpi involved enabling

Residents of Amore resettlement site (a transitional housing project) near Legazpi city.



IRIN/Manocheher Deghathi



IRIN/Manocheher Deghathi

and around the provincial capital, Legazpi.

The Provincial Disaster Coordinating Council (PDCC) reported that 541 people were killed and over 164,180 homes partially or completely destroyed. The government judged that in view of the risk of further landslides it would have to relocate 11,000 families, some 55,000 people, from the slopes of the volcano. Most of these had lost their homes and were living in schools and churches being used as emergency evacuation centres that were not equipped to support the number of people in need; some classrooms housed up to 150 people. As schools needed to be cleared of

could not live without risk of disease, let alone live in dignity. There were disturbing reports of discrimination and abrupt relocations.

Oxfam GB responded by introducing a humanitarian standards component into its emergency programme, targeting key figures in the government, NGOs, private sector and communities. Oxfam assessed that the conditions in the transitional

Mt Mayon volcano, near Legazpi city.

government, NGOs, the private sector and community leaders to understand the basic concepts of the Principles and the national responsibility framework:

- identifying protection issues related to return, resettlement and reintegration
- developing an action plan to address IDP issues in Albay
- distributing copies of the Principles in Tagalog, the national language, and the local language, Bicolano
- convening whole-community orientation sessions on the Principles and IDPs' rights.

Partnership with SAC Legazpi led IDPs to organise themselves into 300 Core Groups to represent those living in evacuation centres, transitional sites and within the 'unsafe' zone. Forty per cent of them have continued to function following closure of the project. Core Groups have:

- improved distribution of goods/services and ensured they are based on community-identified need
- improved information flow by establishing direct lines of communication with government officials and NGOs

- established regulations within evacuation centres
- changed government policies – ensuring that vulnerable people living outside evacuation centres are also eligible for assistance
- assisted with assessments, targeting, encouragement of volunteerism and distribution of assistance
- launched a grass-roots IDP advocacy newsletter to promote flow of information
- worked with government officials to organise a General Assembly for all IDPs, establishing a common focal point for liaison with Ayuda Albay.

Impact of raising awareness

When the project was first discussed, the government was apprehensive, fearing that providing communities with information about Sphere and the Principles would incite them to make unmeetable demands at a sensitive time in the Philippine electoral cycle. Oxfam built confidence by underscoring that community participation, regular flow of information and dialogue would lead to a more effective response and allow all those concerned space for discussion, compromise and mutual understanding.

Government authorities have acknowledged that without the training and the improvements in standards of response they would have been faced with significant unrest amongst evacuees. A key contributor to the success of this project was the eventual commitment and buy-in of the government.

Training community leaders has given them the tools to articulate their needs and to use an internationally recognised framework to hold state and non-state actors to account. Whether displaced by violence, development or natural disaster, communities are protected both by international law and national obligations. The Typhoon Dorian response has demonstrated that a key factor contributing to the application of these laws and principles is that government, NGOs and communities must be aware of their obligations and rights. This can create a dialogue that is ultimately beneficial for all.

Sara McHattie was Oxfam GB's Programme Manager for the Typhoon Dorian Emergency Response. For more information, please email rhastie@oxfam.org.uk While the European Commission supported components of the project, the views expressed here should not be regarded as reflecting those of the European Community.

1. <http://www.sphereproject.org>

Internal displacement in the Central African Republic

Laura Perez

In the Central African Republic (CAR), where most displaced people are unaware of their rights, the Norwegian Refugee Council (NRC) is seeking to promote wider awareness of, and respect for, the Guiding Principles.

Since 2005, 197,000 people have been internally displaced due to armed conflict between the government of François Bozizé and various rebel groups, and because of attacks by bandits known as *coupeurs de route* who take advantage of the government's inability to guarantee security. Although all

rebel groups have signed ceasefire agreements and a peace process is underway, the security of most people in northern CAR has hardly improved because banditry has replaced political conflict as the main source of violence. Displaced people in CAR have depended almost entirely on help from host

communities, and only those who are living in relatively accessible areas have received assistance from international relief organisations.

In response to the displacement crisis in CAR, NRC has been working in emergency education in the northern province of Ouham since April 2007. Home to about 12% of the country's IDPs, Ouham is one of CAR's most conflict-affected regions. NRC's project supports approximately 14,200 children in 57 primary schools through teacher training, provision

of school materials, school feeding programmes, training of parent-teacher associations and building capacity of the education ministry.

NRC also undertakes protection and advocacy by reporting on the situation of IDPs in the villages where it works and supporting joint initiatives such as a nationwide IDP advocacy campaign. The continuous presence of NRC and other humanitarian organisations in areas of displacement helps deter would-be aggressors (protection by presence).

Using the Guiding Principles

NRC has conducted protection training workshops on the Guiding Principles for local authorities, the army and the police, to support security sector reform. The government has neither adopted the Principles as a policy framework nor incorporated them into national law. However, UN agencies and international NGOs use them regularly to promote the rights of IDPs. They are a standard component of protection workshops, and have been used to train humanitarian observers, local authorities, government forces, international peacekeeping troops and rebel groups such as the Popular Army for the Restoration of the Republic and Democracy (APRD) which controls

areas in the north of the country bordering Chad and Cameroon.

The Principles were prominent in a September 2008 training session for the Mission de consolidation de la paix en Centrafrique (MICOPAX)¹ – a regional peacekeeping force with about 300 troops from Gabon, Chad, Congo and Cameroon. Over 30 officers and troops from the Chadian contingent were trained in the Principles and on child protection in emergencies. The training sessions are an integral part of the troops' preparation for field operations.

In 2007, UNHCR translated the Guiding Principles into Sango, the national language, and illustrated some of the principles in order to make them as accessible as possible to non-literate communities. The Sango version of the Guiding Principles has been distributed to government ministries, local human rights NGOs and civil society organisations. They now need to be distributed more widely to displaced communities to raise their awareness about their rights.

The plight of displaced children

NRC's Internal Displacement Monitoring Centre (IDMC) visited CAR in July and August 2008

to research and report on the protection and assistance needs of internally displaced children. IDMC found that displaced children face severe protection problems from violence and insecurity.

Unlike other children, displaced children have suffered trauma after witnessing extreme levels of violence such as the killing of family members when their villages were attacked by road bandits. During these attacks, some displaced children, including girls, have been abducted to work as porters of stolen property or kidnapped for ransom. Many others have been recruited into armed forces or groups.

The nutrition, water and sanitation, health and shelter needs of CAR's displaced children remain largely unmet. Many are in urgent need of adequate shelter, having been forced to sleep outdoors during the rainy season, exposed to higher risks of contracting malaria or upper respiratory infections. Displaced children face economic exploitation as they are forced to work in fields belonging to host communities in exchange for food or meagre pay. These children's education is being interrupted and their long-term development jeopardised.



These IDPs have lived in this temporary site since February 2006 after fleeing an attack by governmental forces on their village in Boutouli, 3 km away, CAR.

Displaced children from minority groups such as the Peuhl face ethnic discrimination, not least because many host communities, and even other IDPs, have the mistaken perception that all Peuhl are road bandits. Due to the destruction of their migration routes and loss of their animals from violence and armed conflict, many Peuhl communities have been forced to settle among subsistence farmers and are struggling to adapt to a new way of life. The protection needs of displaced children have not been adequately addressed by the Government of CAR nor by the international community in general.

Legal framework for response

CAR has ratified the Pact on Security, Stability and Development in Africa's Great Lakes Region,²

which entered into force in June 2008. The Pact's Protocol on Protection and Assistance to IDPs commits member states not only to enact national legislation to implement the Guiding Principles into domestic law but also to create a practical implementation framework. States have different ways of introducing international law into their national legal systems. Under CAR's constitution, the provisions of any international instrument ratified by CAR become binding and have precedence over national laws.³ One gap that remains, however, is the lack of a specific legal framework to protect IDPs in general and displaced children in particular. The current laws do not provide a sufficiently detailed basis for addressing and responding to the needs of IDPs.

NRC therefore recommends that the government of CAR adopt and implement the Principles as a framework for providing protection and assistance to IDPs, and prepare and enact national legislation to implement the Principles fully, including specific provisions for the protection and assistance of internally displaced children.

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1. <http://www.operationspaix.net/-MICOPAX->

2. [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/60ECE277A8EDA2DDC12572FB002BBD7/\\$file/Great%20Lakes%20pact_en.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/60ECE277A8EDA2DDC12572FB002BBD7/$file/Great%20Lakes%20pact_en.pdf)

3. Article 72, Constitution of the Central African Republic, 2004.

UNHCR and the Guiding Principles

Khassim Diagne and Hannah Entwisle

UNHCR today works with governments and other humanitarian actors in 28 countries to protect nearly 14 million IDPs.

UNHCR has worked to protect and assist IDPs since the mid 1970s. Initially, the UN system divided responsibility for protecting and assisting IDPs on an ad hoc basis. In 2003, it sought to improve its response through an inter-agency 'collaborative approach', which allocated responsibilities informally. In 2005, this approach was refined in an effort to increase predictability and accountability, particularly in responding to internal displacement. Agencies were assigned leadership responsibilities under the 'cluster approach'. UNHCR formally assumed leadership responsibilities for three clusters: protection, camp coordination and camp management, and emergency shelter.

UNHCR views the Guiding Principles as more than a simple compilation and restatement of legal rules. UNHCR's 2007 IDP Policy Framework and Implementation Strategy¹ affirms their relevance, stating that they will be incorporated into the Office's protection and human rights activities for IDPs. The provisional

edition of the inter-agency *Handbook for the Protection of Internally Displaced Persons*,² issued in December 2007, proposes several protection activities supported by the Principles, including strategic development, protection monitoring, and assessing IDPs' enjoyment of rights. The *Handbook* also shows how the Principles can help foster an inter-agency understanding of what protection means in an operational context.

The Principles have played a significant role in shaping UNHCR's operational responses for IDPs. Their use in programming and advocacy has arguably helped bolster their credibility and influence as a relevant international legal instrument. This article highlights examples of this symbiotic relationship between UNHCR and the Principles and how this has generated concrete benefits to IDPs over the past decade. As the international humanitarian and legal environment evolves to recognise the persuasiveness of the Principles, they are increasingly becoming an operational protection

tool for UNHCR, governments and IDPs themselves.

In the Democratic Republic of the Congo, UNHCR has emphasised the particular importance of education about the Principles when working with survivors of sexual and gender-based violence, thus supporting them to assert their rights for compensation and justice. In the Central African Republic, Timor-Leste and Sudan, UNHCR operations have stressed the importance of the Principles as a tool to explain to national and local authorities their responsibilities towards IDPs.

Elements from the Principles have also been incorporated into national and state level frameworks. One example, deriving directly from Principle 6 on protection from arbitrary displacement, is the Khartoum State Principles on Relocation, signed by the state authorities and the UN in April 2007.³ UNHCR offices have likewise supported efforts to incorporate the Principles into regional documents and legal instruments, such as the draft African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.

Colombia

Colombia's extensive legal framework upholding the rights of IDPs is an oft-cited example of the incorporation of the Principles into domestic law. Colombia's primary displacement legislation (Law No. 387 of 1997) was enacted before the adoption of the Principles but the Colombian authorities referred to the preparatory work done by former Representative of the Secretary-General on Internal Displacement, Francis Deng, when developing the country's normative framework. In 2001, the Constitutional Court decided to incorporate the Principles into the 'Constitutional Block', thereby making the Principles binding in national law. As a result, a wide range of public policies now reflect the Principles as a fundamental basis for the institutional response to internal displacement.

There is, however, a considerable gap between Colombia's comprehensive legal framework and its implementation at national and departmental levels. The Constitutional Court sought to address this discrepancy in May 2004 with a landmark judgment (T-025), within which several orders were issued requesting the government to fulfil its responsibilities as regards the displacement crisis.⁴

UNHCR's programmes in Colombia illustrate the impact the Principles can have in societies where there is a solid legal infrastructure to assimilate them. When discussing the role of humanitarian assistance with government authorities, UNHCR relies on the Principles to explain the necessity for impartiality and neutrality and the non-discriminatory nature of humanitarian action. National NGOs and associations working on displacement issues have played a key role in disseminating and applying the Principles. IDP advocates rely on them when calling for IDPs' rights to be enforced and refer to them in reports to the Colombian Constitutional Court. A recently signed agreement between the Ministry of Agriculture and UNHCR gives IDPs the possibility of protecting abandoned lands and benefiting from new initiatives to restore their property rights. The Principles are also routinely used by the group of experts



within the National Commission of Reparation and Reconciliation, which has been tasked with creating a national reparations plan.

Serbia and Kosovo

Nine years after the end of the conflict in Kosovo, the situation of the 206,000 IDPs in Serbia remains delicate. There is no institutional responsibility for their protection and UNHCR statistics show that only 18,060 members of minority communities have returned to Kosovo since 1999. Sustainable returns have been hindered by security constraints, lack of political will, complicated return procedures, restrictions on freedom of movement, destruction of property, an ineffective property restitution system and limited access to services.

Ensuring the informed, voluntary and dignified return of IDPs is an ongoing challenge in Serbia. UNHCR has conducted various cross-boundary activities over the years to inform IDPs about conditions in their place of origin and developments in Kosovo. It has also provided free legal assistance and advice on how to pursue property restitution. The UN Mission in Kosovo (UNMIK)⁵ has also released a *Manual on Returns*

which incorporates elements of the Principles. Even though the right to freedom of movement and the ability to choose one's residence may be acknowledged, financial and political constraints have meant that UNMIK and the Serbian authorities have struggled to fully apply these principles. The Principles provided the framework for the 'Analysis of the Situation of Internally Displaced Persons from Kosovo in Serbia: Law and Practice', one of the main advocacy and programming tools used by UN agencies and NGOs in Serbia.⁶

Sri Lanka

The Principles form the basis of all UNHCR awareness raising, training activities, protection monitoring and advocacy in Sri Lanka, including with IDPs and host communities. Education programmes have made non-displaced children more aware of the challenges facing IDP children. The Principles have also been used to advocate for more active inclusion of IDP pupils in school life. In one situation, this even prompted a class to request a student exchange trip so they could better understand the living conditions of displaced peers. The Principles are used on a day-to-

Children attend a UNHCR-funded primary school in the permanent relocation village of Tharanikulum, in Vavuniya, Sri Lanka.



UNHCR/R. Chalesani

day basis to help deal with concerns arising from protection monitoring. In another case, UNHCR staff met with school principals when it was discovered IDP children were being denied entry into schools because of overcrowding. Working with the principal, local government and the IDP community, additional teachers and resources were found to accommodate the displaced children.

The Principles have influenced national peacebuilding efforts, including a tool developed by UNHCR (Confidence Building and Stabilisation Measures for IDPs in the North and East⁷) and approved by the Inter-Ministerial Committee on Human Rights in October 2006. It promotes co-existence and peacebuilding activities between communities and among communities, civil administration, armed forces and law enforcement agencies. It highlights the need to restore essential infrastructure and services in return areas and frames UNHCR's protection work.

Northern Uganda

The Principles constitute the key reference for the National Policy for IDPs adopted by the

Ugandan government in 2004. The Policy commits the government to protecting its citizens against arbitrary displacement, guarantees their rights during displacement and promotes voluntary durable solutions. The National IDP Policy provides UNHCR with a strong basis upon which to build its programmes to strengthen protection monitoring, develop government and civil society capacity, facilitate the achievement of durable solutions, and support camp phase-out and closure processes. UNHCR uses the Principles alongside the National IDP Policy in all training activities, including with the police. Principle 14 on the right to freedom of movement gained particular significance in 2006 when the protection cluster identified government restrictions on IDPs moving in and out of camps as a key protection concern. A large-scale freedom of movement advocacy campaign targeted the national government, local authorities and the army. Cluster members brought international attention to the devastating protection problems for IDPs resulting from confinement in camps, including restricting IDPs from pursuing livelihood opportunities. This campaign and the improved

security situation as a result of the ceasefire with the Lord's Resistance Army meant the government has now lifted all restrictions on freedom of movement in camps and return areas, paving the way for IDPs to voluntarily return or locally integrate.

The next decade and beyond

This article has given some concrete examples illustrating how UNHCR's use of the Principles in its day-to-day operations contributes not only to improved IDP protection but also to strengthening the Principles as a legal, advocacy and planning tool. The success of the Principles is a testament to the international efforts of NGOs, the UN, governments and IDPs alike.

While the Principles have made a significant impact, further guidance is needed to determine when internal displacement can be said to have ended, to address protracted displacement situations, and to ensure IDPs are adequately included in peacebuilding activities. Other challenges include the need to improve protection and assistance activities – and find solutions – in urban environments where it can be very difficult to distinguish displaced populations. Further reflection is also required on forced displacement due to climate change, and whether this can be adequately addressed within the current legal frameworks and operational institutions, or whether new legal frameworks or institutions may be required. In the years to come, UNHCR will continue to work towards building acceptance of the rights-based approach to internal displacement contained within the Guiding Principles.

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1. <http://www.humanitarianreform.org/humanitarianreform/Portals/1/H%20Coordinators/HC%20treat/Day%202/HCRIIDPpolicyframework.pdf>
2. See Sources and Resources on p40.
3. <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=SUBSITES&id=47fb81ee2>
4. See Rothing and Romero, 'Measuring the enjoyment of rights in Colombia', FMR30 <http://www.fmreview.org/FMRpdfs/FMR30/64-65.pdf>
5. <http://www.unmikonline.org/>
6. <http://www.unhcr.org/refworld/pdfid/42120e54.pdf>
7. <http://www.unhcr.org/publ/PROTECTION/482af5132.pdf>

Training to strengthen protection of IDP rights

Kim Mancini Beck

The earliest post-launch training activities around the Principles aimed mainly to raise awareness and generate acceptance from government, NGO, UN and international actors. In recent years, training has moved beyond awareness raising to applying the Principles and setting global standards.

The tenth anniversary of the Principles offers an opportunity to review training progress. The Humanitarian Response Review (HRR) which led to the implementation of the cluster approach in December 2005¹ provided a catalyst for humanitarian agencies to reinforce and reorient training programmes, ensuring the incorporation of the Principles into training interventions. The cluster approach has also contributed significantly to inter-agency development of tools² and the global protection cluster has played a pivotal role in developing and disseminating tools that focus on IDP protection. Other cluster training resources focused on mainstreaming internal displacement considerations into areas such as gender-based violence, camp management and early recovery.

Some inter-agency initiatives that preceded the HRR illustrate the value of inter-agency cooperation on training to establish common standards and field guidance tools, and were later reinforced by the cluster approach. For example, the Camp Management Project (CMP) was initiated in Sierra Leone in late 2002 to improve the quality of assistance and protection in the country's IDP camps and resulted in the publication of a toolkit in 2004 (updated in 2008)³ followed by the development by the Norwegian Refugee Council (NRC) of training materials, a training of trainers (ToT) course and an inter-agency roster of trainers. After the Camp Coordination and Camp Management (CCCM) cluster was established, it assumed leadership in this field and developed standards, tools and guidelines, including three comprehensive training packages.

The inter-agency Protection Capacity Standby Project (ProCap), hosted by the UN Office for the Coordination of Humanitarian Affairs (OCHA), supports UN field offices through deployment of senior protection officers and a training programme for mid-level NGO standby protection experts. ProCap's six-day residential training course on protection in emergencies addresses protection broadly but also provides a specific focus on internal displacement and inter-agency coordination. During the course, participants are called on to take institutional mandates out of the equation when analysing protection risks and needs, and then to assume different 'agency hats' in a simulated emergency protection response.

The Action for the Rights of Children (ARC) initiative⁴ produced a training package on child protection in emergencies which includes briefing notes, participatory training materials, case studies, training aids and a facilitator's guide. Revised materials expected in 2009 will incorporate considerations specific to complex emergencies, displacement and disaster situations. This tool focuses on the potential consequences of displacement on the rights of children in terms of critical issues such as separation of families, risk of abuse, recruitment into armed forces and child labour.

In addition to formal inter-agency initiatives, some providers strongly focus on training national and local actors. The UN Secretary-General's Representative – supported by OHCHR and the Brookings-Bern Project on Internal Displacement – runs an annual five-day residential course and regional training workshops on issues such as peacebuilding, natural disasters and national laws and policies

on displacement. Brookings-Bern works with academic and civil society partners to organise courses in South Asia and East Africa and liaises closely with national human rights institutions to support their engagement with IDPs. The NRC's Internal Displacement Monitoring Centre (IDMC) provides support to field-based UN agencies and international NGOs to train national and local partners. Its programme includes a three-day protection workshop that covers all aspects of internal displacement. NRC field offices have also developed a drama-based methodology to empower IDPs about their rights and to identify courses of action for change. The International Organization for Migration (IOM) runs a course for policymakers on the political rights of the displaced and has incorporated IDP issues into an international migration law course for mid/senior-level government officials.

Many organisations have mainly focused on strengthening their training activities for their own staff and operational partners. For example, OCHA's Displacement and Protection Support Section (DPSS) provides training in needs assessments, strategy development, operational responses and coordination at the global and field levels for the staff of OCHA and members of the Inter-Agency Standing Committee (IASC). UNHCR has incorporated IDP components into staff learning programmes and is developing programmes for staff induction and for senior managers on IDP protection. OHCHR has incorporated IDP-specific considerations into its basic training for field human rights officers and a specialised course on strategies and skills for human rights monitoring. UNICEF has incorporated IDP issues into a policy and its training programmes on child protection. The World Food Programme (WFP) has developed policy, field guidance and a training programme for staff and partners to roll out its new approach to mainstreaming protection into food assistance interventions.

Protection reviews carried out by the Danish Refugee Council (DRC) have led them to incorporate IDP-specific considerations into training activities and to develop an IDP Profiling Toolbox⁵ based on their field experience in Somalia.

ICRC's training approach remains closely tied to its mandate to protect all victims of armed conflict, with IDPs seen as part of a broader spectrum of people who have suffered violations of international humanitarian law. Since the HRR, the ICRC has focused staff training on increasing their understanding of the reforms and the cluster approach. It has also engaged in increased dialogue with partners to articulate the ICRC's approach to IDP protection to provide a broader frame within which to address internal displacement.⁶

Time to take stock

These new resource materials reflect progress towards a better understanding of respective mandates and approaches, increased exchanges of experiences and inter-agency delivery of field training in the field. The cluster approach has, however, only been activated in a small number of countries affected by internal displacement. Much remains to be done before common standards and the cluster approach are consistently understood and implemented by all stakeholders in the field.

A 2007 UNHCR analysis of evaluations in five cluster IDP operations⁷ indicates where international organisations stand in terms of progress towards more effective delivery of protection and assistance to IDPs. The evaluations highlighted gaps in knowledge and skills, indicating the need for increased training to address lack of engagement by important stakeholders, including some host governments, many national NGOs and even some UN field staff. These common challenges faced by international organisations can best be addressed by more cross-fertilisation between 'protection' and 'assistance' organisations to ensure consistent understanding and delivery of training on the human rights of IDPs. In both the protection and early recovery clusters, common issues such as child protection, gender-based violence, housing, land and property rights, and rule of law and justice are addressed in different

ways. Many more synergies could be explored with a view to making effective transitions from humanitarian response to development.

National and local authorities, human rights agencies, faith-based and other civil society organisations, and IDP communities are active in using the Principles in dissemination and training activities. UNHCR's 2007 evaluations have highlighted the need for additional guidance on how to better engage with national stakeholders in order to enhance national protection capacity. Many international organisations have had successful results from capacity-strengthening activities in IDP operations and in contexts such as human rights, asylum and rule of law but the capacity and resources dedicated to documenting and sharing good practices vary. In order to progress further towards a consistently effective response to internal displacement, the challenge of evaluating field training and capacity-strengthening activities conducted by a wide range of actors should be taken up at the inter-agency level and supported by donors. Without a comprehensive review, it will be difficult to remedy the recurrent weakness identified by UNHCR in terms of reinforcing state responsibilities to protect and civil society organisations' capacity to contribute to enhancing national protection capacity.

More inter-agency debate is needed to resolve misunderstandings and concerns that the IDP category may have obscured attention to the rights

and protection needs of other affected populations such as the non-displaced victims of war and natural disasters. Many organisations are also struggling with how to assist less visible urban IDPs and to support host families and communities sharing meagre resources with IDPs. Also, no UN agency has a designated lead role in situations of natural disaster as the cluster approach merely sets out that UNICEF, OHCHR and UNHCR should be consulted to determine who will take a lead role when a natural or human-made disaster occurs.

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1. For further information on the cluster approach, see FMR29: <http://www.fmreview.org/humanitarianreform.htm>

2. Many of these tools are described in other articles in this issue of FMR. Please refer also to the listing of resources on p40.

3. <http://www.nrc.no/camp/>

4. <http://www.savethechildren.net/arc/> See also the self-study CD-Rom entitled 'Introduction to child protection in emergencies'.

5. [http://www.internal-displacement.org/8025708F004CFA06/\(httpKeyDocumentsByCategory\)/B3898C325EEBCF24C12574CE00317D2D/\\$file/DRC%20-%20IDP%20Profiling%20Toolbox_final%20April%202008.pdf](http://www.internal-displacement.org/8025708F004CFA06/(httpKeyDocumentsByCategory)/B3898C325EEBCF24C12574CE00317D2D/$file/DRC%20-%20IDP%20Profiling%20Toolbox_final%20April%202008.pdf)

6. See article by Cordula Droegge on pp8-9.

7. 'Real-time evaluations of UNHCR's involvement in operations for internally displaced persons and the cluster approach: analysis of findings', 2007. <http://www.unhcr.org/refworld/docid/470394f12.html>

Rights in practice

A couple of years ago I was in eastern Democratic Republic of Congo to attend training sessions in the application of the Guiding Principles run by the Norwegian Refugee Council. We held workshops in the field with various armed groups, police, village chiefs, religious leaders and ordinary people from the IDP and host communities. The very notion of rights was foreign to many of them and the training led to some surprising results.

One IDP returnee told me what had happened to his fishpond, which provided his main source of income as well as food for his family. The village chief had taken it for himself, claiming this was in accordance with the chief's status, needs and local customs. They had both attended the Guiding Principles training course so the villager reminded the chief about the workshop and the debates held there. He claimed that the chief had violated his rights by taking the fishpond for himself – and that he should return it to him. The chief admitted he was in the wrong and duly returned the fishpond to its rightful owner.

Pål Nesse, Head of Advocacy Section, Norwegian Refugee Council

The future of the Guiding Principles

Walter Kälin

Although it is hard to take an objective view on an enterprise in which you have been closely involved, it is fair to say that over the last ten years the Guiding Principles have demonstrated their utility and impact but also their limitations.

In Burma, they have been used to raise awareness about displacement and mobilise humanitarian assistance but have offered little diplomatic or political leverage to influence the national authorities. During elections in Bosnia and Herzegovina and in Kosovo, the Principles focused attention on IDPs' political rights but across the world IDP political participation remains inconsistent. They have helped inspire the peace process in Nepal but the country still lacks an effective IDP strategy. They have informed the ongoing process of drafting the African Union Convention for the Prevention of Internal Displacement and the Protection of and Assistance to Internally Displaced Persons in Africa but – assuming it is approved by the African Union at a special summit¹ – its effectiveness will depend on the degree of compliance and monitoring. The Principles were issued to Georgian civil servants designated to provide assistance to those displaced by the recent conflict but the response of the government to Georgia's latest displacement crisis has been criticised. They form the basis for Uganda's National Policy for Internally Displaced Persons but there is still a very significant implementation gap.

As the article by Elizabeth Ferris² explains, it is not easy to assess accurately the impact of the Principles. However, the examples that have been provided in this Special Issue, in particular those by field practitioners working with the Principles, have helped me to better understand their potential and limitations.

What can be done to further increase the impact of the Principles? Some have suggested that the sorts of

obstacles to their adoption and implementation described in the preceding articles would be overcome by having a binding UN Convention on the human rights of IDPs. Francis Deng, my predecessor, deliberately submitted the Principles as an expert text rather than a draft convention.

As the article by Deng and Roberta Cohen³ explains, there were several convincing reasons for this decision. Treaty making in the area of human rights had become difficult and time-consuming. Deng felt that something more immediate was required to respond to the needs of the growing numbers of IDPs worldwide, and he wanted to avoid a long period

of legal uncertainty resulting from drawn-out negotiations. We stressed that the Principles were not creating new law but restating obligations that already existed under human rights and international humanitarian law binding upon states. We were concerned that negotiating a text that draws as heavily from existing law as do the Principles might have allowed some states to renegotiate and weaken existing treaty and customary law. Having a treaty approved would by no means have guaranteed its widespread ratification by governments. Finally, we felt that to draft a treaty that combines human rights and humanitarian law was probably premature. In legal, institutional and political terms, the distinction between human rights applicable mainly in peacetime and humanitarian law for times of armed conflict still was so fundamental that it was likely that many states and organisations would strongly oppose

IDP camp, Hal Hajid, Chad, February 2008.



any attempt to combine both areas of law in a single UN convention.

Still an internal affair?

These reasons still stand today. Negotiations on the 2005 World Summit Outcome document⁴ showed that while the Principles were welcomed by all governments, many governments were still not ready explicitly to recognise their binding character. The idea that internal displacement is essentially an ‘internal affair’ remains strong in many parts of the world. Consensus between states and their sovereign governments is the very foundation of international law. I believe it still makes sense to continue to build consensus from the ‘bottom up’.

Such an approach hinges on convincing states affected by internal displacement to incorporate the Principles into domestic law and to encourage regional organisations to develop locally applicable normative frameworks. This approach has worked with some success but we must develop new strategies, especially how to better incorporate the rights of IDPs restated by the Principles into domestic law. Too often, they are incorporated simply through a general reference to the Principles in a law or policy document. This may be because of an insufficient understanding of the complexities of the task but in some cases indicates lack of sufficient political will to properly address the plight of IDPs.

My missions and visits to countries affected by internal displacement have shown that, even where the political will to help IDPs does exist, applicable legislation often fails to take into account their specific needs and thus may create insurmountable obstacles for enjoyment of the rights guaranteed to them. In Nepal, for example, the right to education of displaced children is affected by their inability to produce ‘transfer papers’ issued by the headmaster of their former school, thus barring them from enrolment in a new school. In Côte d’Ivoire, most displaced children lack the birth certificate needed to access schools – either never having had one, having left it behind during flight or having had it confiscated – but there are no mechanisms for replacing documents. Commonly,

IDPs cannot participate in elections because there are no provisions for absentee voting. In northern Uganda, funding mechanisms provide districts with resources earmarked for development, not humanitarian activities; at the end of the year, funds which could have alleviated IDPs’ problems have been returned unspent to Kampala as conflict has prevented development activities. Frequently IDPs cannot regain their property because they lack documents proving their ownership. Sometimes, people displaced for long periods cannot recover their property even if return becomes possible because of statutes to the effect that those who have abandoned property for a stipulated period have lost their rights. This can allow those who arbitrarily displaced people by force to become rightful owners.

It is obvious that in such situations the headmaster of a local school, the national electoral commission or other authorities will stick to the laws immediately regulating their work and not apply the Principles, even if they know them. In short, existing domestic laws on internal displacement have not always succeeded in clarifying how the rather abstract general principles of international law articulated by the Principles should be translated into concrete actions.

Manual for Law and Policymakers

The next step is to bring the Principles into line with relevant domestic laws. My mandate, together with the Brookings-Bern Project on Internal Displacement, has developed a manual for law and policy makers which identifies obstacles and key principles that must be enshrined at the domestic level. The central aim of the manual is to provide advice on how to shape laws and policies addressing the protection and assistance needs of IDPs in a way that ensures full protection of their rights in accordance with the Principles. The manual is targeted at national policymakers, competent ministries, legislators and civil society groups concerned with internal displacement. We hope the manual will be of direct and concrete assistance in crafting laws and policies that will, wherever possible, prevent internal displacement and mitigate its effects

on the lives of IDPs. While the guidance in the manual will need to be applied in accordance with the domestic legal order and national drafting traditions, it should provide specific guidance on approaches to structure responses to internal displacement that comply with relevant international law principles.⁵

The law of internal displacement can only grow if states, international organisations and other actors continue to insist that specific guarantees exist for the internally displaced. Even if some of these claims will be rejected, others, as the history of the Principles show, will be accepted. I hope that this growing body of law will continue to take the direction indicated in the Guiding Principles and become an even stronger tool to protect the millions of IDPs around the world.

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1. http://www.unhcr.org/Conference_Special_Events/2008AUSpecialSummit.html

2. See p10.

3. See p4.

4. <http://www.un.org/summit2005>

5. *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, Brookings-Bern Project on Internal Displacement, October 2008. Available to download at http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx or email brookings-bern@brookings.edu to request a copy.

“We have rights”

In Colombia, I met a dozen or more men and women in ragged clothes who had walked for hours through the jungle to meet me in a dilapidated school-house on the Pacific coast. They spoke about how they had fled the ongoing violence, had left behind everything, and were now struggling to survive. And then one man added: “Amidst all this suffering, we know one thing for sure. We have rights and they cannot take them from us even if they violate them. The Guiding Principles on Internal Displacement are our rights. They clearly say that we have the right to safety, the right to food and to health, and the right to return to our homes; and this gives us hope.”

Sources and resources

Guiding Principles on Internal Displacement: full text in many languages online at http://www.brookings.edu/projects/idp/gp_page.aspx

Legal framework and national responsibility

Guiding Principles on Internal Displacement: Annotations, American Society of International Law, Brookings/Bern Project, Revised Edition, 2008: <http://www.asil.org/pdfs/stlp.pdf>

Identifies the legal sources in international law for each of the Principles.

Protecting Internally Displaced Persons – A Manual for Law and Policy Makers, Brookings/Bern Project, October 2008: http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx

Provides detailed guidance to national authorities on how to shape laws and policies addressing protection and assistance needs of IDPs and ensuring their rights in line with the Guiding Principles; reviews relevant questions and issues to be addressed by national authorities; and contains lists of minimum essential elements of state regulation.

Addressing Internal Displacement: A Framework for National Responsibility, Brookings/Bern Project, April 2005: http://www.brookings.edu/projects/idp/20050401_nrframework.aspx

Sets out 12 steps for governments to take and provides a basis for assessing/monitoring progress.

Using the Guiding Principles

The Handbook on the Protection of IDPs, Protection Cluster Working Group, December 2007: <http://www.humanitarianreform.org/Default.aspx?tabid=294>

Designed for those in charge of IDP protection on the ground. Reviews key components of IDP protection, including the normative and institutional frameworks, protection activities and tools, and provides 'action sheets' addressing protection risks commonly encountered by IDPs. Final version to be released in 2009.

Protecting Persons Affected by Natural Disasters – IASC Operational Guidelines on Human Rights and Natural Disasters, June 2006: <http://www.humanitarianinfo.org/iasc/downloadDoc.aspx?docID=3429&type=pdf>

Guidelines focusing on what humanitarian actors should do in order to implement a rights-based approach to humanitarian action in the context of natural disasters. Complemented by a manual. Final version to be released in 2009.

Protection of Conflict-induced IDPs: Assessment for Action, Protection and Early Recovery Cluster Working Groups, 2008: <http://www.humanitarianreform.org/Default.aspx?tabid=555>

Framework developed to help states and humanitarian agencies conduct a comprehensive analysis of the situation of IDPs and of affected populations. In Part I (following Guiding Principles structure), each chapter reflects a cluster of rights drawn from international law; Part II provides general guidance on participatory assessment methodologies. Still a provisional release, scheduled in final form for 2009.

When Displacement Ends: A Framework for Durable Solutions for Internally Displaced Persons, Brookings/Bern Project, June 2007: <http://www.humanitarianinfo.org/iasc/downloaddoc.aspx?docID=4123&type=pdf>

Provides guidance to determine whether and to what extent a durable solution has been achieved for IDPs. Examines both the processes through which solutions are found and the actual conditions of IDPs in search of durable solutions.

Guidance on Profiling Internally Displaced Persons, Internal Displacement Monitoring Centre, UN Office for the Coordination of Humanitarian Affairs, April 2008:

<http://www.internal-displacement.org/profiling>

Designed to help humanitarian actors gather better core data on IDPs, including number of IDPs disaggregated by age and sex and location, proposing various methodologies and providing advice on choosing the best for a given country context.

Specific sectors/issues

Standards and good practices pertaining to the protection of IDPs have been included in several inter-agency documents developed for specific sectors or issues:

- Guidelines for Gender-based Violence Interventions in Humanitarian Settings (IASC, 2005)
- Gender Handbook in Humanitarian Action (IASC, 2006)
- Camp Management Toolkit (DRC, IRC, NRC, UNHCR, OCHA, IOM, 2008)
- Guidance Note on Early Recovery (Early Recovery Cluster Working Group, 2008)
- Handbook on Housing and Property Restitution for Refugees and Displaced Persons (2007, FAO, NRC/IDMC, OCHR, OHCHR, UN-Habitat, UNHCR)

All documents online at:

<http://www.humanitarianreform.org>

Other web resources

Representative of the UN Secretary-General on the Human Rights of IDPs:

<http://www2.ohchr.org/english/issues/idp/index.htm>

Provides access to all documents pertaining to the mandate and work of the Representative, including reports to UN bodies, UN resolutions and press releases since 1992, and to resolutions of the UN General Assembly and other UN bodies pertaining to the Guiding Principles.

Brookings-Bern Project on Internal Displacement:

<http://www.brookings.edu/projects/idp.aspx>

Includes studies, conference reports, articles, etc, for the promotion of more effective policies.

Internal Displacement Monitoring Centre:

<http://www.internal-displacement.org>

Includes the Global Internally Displaced Persons Database, documenting the situation of IDPs in more than 50 countries, plus training materials on the Guiding Principles, country reports and thematic documents on issues such as profiling and urban IDPs.

Guiding Principles Global Database:

<http://www.idpguidingprinciples.org>

Collection of official documents about the rights of IDPs and the application of the Guiding Principles, including relevant national laws and policies, regional and international instruments, UN documents and statements of national authorities.

GP10 conference website:

<http://www.internal-displacement.org/gp10>

Includes: conference presentations (text/video) and conference summary, plus access to all language editions of the Guiding Principles and other documents/resources relating to IDP rights.

Forced Migration Review (FMR): <http://www.fmreview.org>

Provides access to all back issues of FMR with many articles on the Guiding Principles. Searchable and indexed. Available in English, Arabic, French and Spanish.

