

Internal Displacement and Refugee Status Determination

By Khalid Koser

In 2009 922,500 asylum claims were submitted in 159 countries or territories around the world, according to statistics from the United Nations High Commissioner for Refugees (UNHCR). The USA received the second highest number at 47,900 applicants, behind South Africa with a staggering 222,000 applicants. Other significant destination countries were Malaysia (40,100) and Ecuador (35,500). With growing numbers of asylum applications (the number in 2009 comprised the third consecutive annual rise), and an increasing proportion of asylum seekers headed for new countries often in the global South, there is rising pressure on the process of Refugee Status Determination (RSD) – that is determining which asylum seekers are and are not entitled to refugee status. A robust RSD process is a fundamental part of a national refugee policy, which must begin with determining which people should have access to limited resources for protection and assistance. And getting it wrong can be life-threatening, especially where it culminates in the return of people who have been rejected by the process to situations where their lives or liberty are in fact in danger. UNHCR conducted RSD either unilaterally or jointly with national governments for 145,000 asylum claims in 2009, meaning that the majority – 777,400 – were processed by national governments alone.

Even in those states with significant experience and well-developed laws and policies for assessing asylum claims, there is often a basic lack of understanding of internal displacement in the RSD process. At first sight this appears logical. Internal displacement concerns people who have moved involuntarily inside their own countries as Internally Displaced Persons (IDPs), whereas by definition refugee status can only be granted to someone who has crossed an international border, and furthermore is fleeing a far more proscribed set of threats than that which applies to IDPs. Yet understanding internal displacement can be critically important for getting RSD right.

First, there is evidence from around the world that IDPs may be at risk of persecution specifically as a result of being internally displaced; in other words not necessarily because of their religion, or ethnicity, or political group, but because they have relocated within their own country. A recent report by the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) on internally displaced women in eastern Chad provides a concrete example. It documents widespread violence at the hands of armed militias and bandits and government troops. But to proceed with a legal case, victims of sexual violence need a medical certificate, which IDPs usually cannot get as they are rarely registered with local medical authorities. Furthermore mobile courts where their cases would presumably be heard only visit eastern Chad once a year; moreover government authorities have not implemented laws to prohibit violence against displaced women and girls, or investigated and prosecuted

those responsible. Another example comes from an NRC report on the situation of children displaced by conflict in north-west Pakistan, which finds that displaced children are particularly at risk of abuse, exploitation, and neglect, and that their situation has been inadequately monitored by national, provincial or district governments.

Where IDPs subsequently leave the country and apply for asylum, which is reported to be a rising trend in sub-Saharan Africa, for example, an understanding of their circumstances as IDPs is clearly pertinent for RSD, although by no means is the relationship categorical. In the case of displaced women in eastern Chad, an argument might be made that they had no recourse to national authorities to protect themselves against sexual violence, and thus had grounds to be considered for refugee status. How an IDP child from north-west Pakistan applying for asylum would be assessed is less clear, as arguably the vulnerability he or she was at risk of does not amount to persecution and would not satisfy the criteria of the 1951 UN Convention relating to the Status of Refugees.

Further complexity arises where IDPs are not fleeing conflict or persecution at home, but for example the effects of natural disasters, which are recognized by the Guiding Principles on Internal Displacement as a cause of internal displacement, but not by the 1951 Convention, as legitimate grounds for refugee status. Yet such IDPs may also face persecution as a result of becoming displaced, prior to seeking asylum. This would give rise to the unusual situation where had a person fled the effects of a natural disaster directly to claim asylum they would not have been granted refugee status, but because they have fled internally first and as a result become at threat of persecution, they might.

A second intersection between RSD and internal displacement relates to return. The 1951 Convention and international law more broadly are clear that a person cannot be returned to their country of origin if their human rights would be at risk there, even if they have not been granted refugee status. This is one reason for the growth in complementary statuses – such as Temporary Protected Status (TPS) in the USA – granted to people who do not satisfy the criteria for refugee status but cannot safely go home at the moment. In response, a growing number of states – including the USA – are increasingly invoking the ‘internal flight alternative’ (IFA) or ‘internal protection principle’ when conducting RSD, according to which an asylum applicant needs to demonstrate that he or she will be at risk not only in his or her home area, but also that they are unable to escape the persecution or threat by relocating elsewhere in the country. This raises the possibility that an asylum seeker can be returned to a location other than his or her home area in the country of origin. In other words an asylum seeker would effectively be returned to a situation of internal displacement. In 2010, a number of European governments, for example, have returned Iraqi asylum seekers to Baghdad and Afghan asylum seekers to Kabul, on the grounds that they would be safe in the capital city, even if this was not their

home. Yet as explained above, there is a risk that such people would face risks directly as a result of being internally displaced – and in the case of return this may well be compounded by specific risks experienced in certain countries by returnees from abroad, including discrimination in official processes and limits on freedom of movement. (Elizabeth Ferris' 2008 article 'Internal Displacement and the Right to Seek Asylum', in *Refugee Survey Quarterly*, expands this argument).

A specific example is from Mazar-i-Sharif Province in Afghanistan, where in order to gain access to land, people need a guarantee from the village council to prove ownership of or permission to use the land. But only repatriated persons whose place of origin in Mazar-i-Sharif are entitled to this permission – new arrivals who do not originally come from the area cannot get permission. Other reports from Afghanistan demonstrate that it is virtually impossible to survive economically in any town or city without an established social network, and that this leaves single women in particular vulnerable. On the other hand there have been recent examples – in Somalia, Sri Lanka, and Sudan for example – where asylum seekers have been returned to areas other than their homes in their country of origin, and have resettled there with the assistance of international organizations and their government.

Both the principle and the implementation of the concept of IFA have therefore been inconsistent. UNHCR does provide guidelines on IFA, but it is worth reiterating that UNHCR is only directly involved in a minority of RSD processes around the world. Elsewhere the IFA principle has developed in a somewhat *ad hoc* manner through international and national jurisprudence, academic analyses and governmental and intergovernmental policy statements, and has given rise to problems of interpretation and application by national courts.

Even if only a small proportion of asylum seekers were previously Internally Displaced Persons; and even if the 'Internal Flight Alternative' applies to a relatively small number of people, in both cases individuals face a genuine threat to their human rights if the Refugee Status Determination procedure does not properly account for internal displacement. There is a need for all states, and especially those with relatively little experience of RSD, properly to integrate an understanding of internal displacement in RSD procedures, especially given the complexity of the relationship between RSD and internal displacement. Immediate steps might include providing training for case officers; ensuring that the Country of Origin Information used to provide evidence in assessing asylum cases includes adequate coverage of internal displacement; and incorporating UNHCR IFA guidelines. In the longer term it would be helpful to promote closer cooperation between the government ministries, departments, or agencies that deal – almost always separately - with asylum and internal displacement.

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