

COMPARATIVE PERSPECTIVES ON LAWS AND POLICIES ADDRESSING INTERNAL DISPLACEMENT

ELIZABETH FERRIS¹
CO-DIRECTOR AND SENIOR FELLOW
BROOKINGS-BERN PROJECT ON INTERNAL DISPLACEMENT

PREPARED FOR THE CONFERENCE ON INTERNAL DISPLACEMENT IN TURKEY:
GOVERNMENT RESPONSES
ORGANIZED BY THE TURKISH ECONOMIC AND SOCIAL
STUDIES FOUNDATION (TESEV)
VAN, TURKEY
27 JUNE 2009

Introduction

Thank you so much for the invitation to participate in this conference. Ever since I began working with internally displaced persons, I have heard references to the Van Action Plan and I am delighted to have an opportunity to learn about how it has been implemented and used on the ground. I am also particularly happy to bring greetings to you from Walter Kälin, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons and the Co-Director of the Brookings-Bern Project on Internal Displacement. Walter has carried out working visits on several occasions (2005 and 2006) to Turkey, following in the tradition of Francis Deng, the first RSG on IDPs who visited Turkey in 2002.

I have been asked to provide a comparative overview of laws and policies on internal displacement. Since I'm not an expert on Turkish displacement—and am aware that I am in fact among the world's experts on displacement in this country—I will only draw out some tentative suggestions from this analysis.

I want to begin by emphasizing the importance of developing strong laws and policies at the national level for responding to internal displacement. As you all know, the *Guiding Principles on Internal Displacement*, based on international human rights and humanitarian law, provide a strong normative framework for upholding the basic human rights of those displaced within the borders of their own country (or country of habitual residence), but in order for this normative framework to have any relevance for those who have actually been displaced, it must be incorporated into national laws and policies. To date, over twenty countries including Turkey and, most recently, Iraq, have already adopted policies or legislation specifically addressing internal displacement—many of which are based on the Guiding Principles—and others are in the process of doing so.

¹ With gratitude to Chareen Stark for her research assistance.

Some key tools have been developed for legislators and other policy-makers to address displacement. Recognizing the importance of applying the Guiding Principles to laws and policies, the Representative of the Secretary-General undertook the development of a legislators' manual to assist national authorities in drafting laws and policies on internal displacement. *Protecting Internally Displaced Persons: A Manual for Law and Policymakers* provides guidance for shaping laws and policies to address the protection and assistance needs of IDPs.² This will be supplemented in coming months with a collection of in-depth studies on each of the issues raised in this manual³.

What I'd like to do in my brief time here today is to:

- 1) put the issue of laws and policies into the broader framework of national responsibility
- 2) give an overview of the ways in which other governments have addressed internal displacement in their laws and policies, focusing on government policies during displacement and in supporting durable solutions
- 3) highlight the example of Colombia which has some particularly far-reaching elements in its national legislation and talk a little about the difficulties in implementing this legislation
- 4) look at current trends in laws and policies and identify some of the common challenges facing many governments confronted with internal displacement,
- 5) say a few words about the *When Displacement Ends: A Framework for Durable Solutions*⁴ and about some of the work that has been done on urban displacement, and
- 6) raise some questions which might be applicable to the Turkish context.

The Framework for National Responsibility

The *Framework for National Responsibility*⁵ was developed to assist governments to exercise their responsibility toward internal displacement. It provides 12 benchmarks for assessing national responsibility, including some measures which are relatively easy to implement—as in naming an institutional focal point on IDPs—and others that are much more difficult, such as taking actions to prevent displacement. One of the benchmarks is collection of data on internal displacement. In that regard, I note that following the visit of the first RSG Francis Deng to Turkey and his recommendation for the collection of comprehensive and reliable data on IDPs, the Turkish government requested the Institute of Population Studies of Hacettepe University to assess the future plans of IDPs as well as their current conditions. This survey was released in December 2006, confirmed the presence of large numbers of IDPs (around a million) and has been cited by many, including us, as an example of a good governmental practice.

Appointing a national focal point is a useful step to ensure sustained attention to internal displacement issues and to facilitate coordination between a variety of governmental and other agencies who have some responsibilities toward the displaced. These focal points take a number of forms in practice, including:

² Brookings-Institution-University of Bern Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers*, October 2008, available: http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx.

³ Another helpful resource is Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, Washington, DC: American Society of International Law, 2008.

⁴ The Brookings-Bern Project on Internal Displacement and Georgetown University, *When Displacement Ends: A Framework for Durable Solutions*, June 2007, available: http://www.brookings.edu/fp/projects/idp/2007_DurableSolutionsFramework.pdf.

⁵ The Brookings Institution-University of Bern Project on Internal Displacement, *Addressing Internal Displacement: A Framework for National Responsibility*, April 2005, available: http://www.brookings.edu/projects/idp/20050401_nrframework.aspx.

- Existing government agencies with relevant mandates that are also charged with coordination of IDP issues
- New agencies or offices set up to coordinate response to displacement, often at the level of the President's or Prime Minister's office;
- Standing committees or inter-agency task forces which institutionalize the collaboration of all involved ministries and agencies.⁶

While the form these institutional focal points take varies a great deal, they work best when they have sufficient political clout and adequate resources to ensure that all relevant government ministries and agencies cooperate and that their proposals and recommendations can quickly move through the system. Some of the responsibilities of these focal points can include:

- Receiving all existing relevant data on IDP populations and where necessary, coordinating efforts to acquire more information
- Being responsible for ensuring that IDPs are consulted throughout the process
- Facilitating and coordinating provision of humanitarian assistance
- Identifying necessary amendments to existing laws and overseeing the drafting process for new laws and national policies on internal displacement
- Developing training materials and disseminating best practices and guidance
- Exercising the authority to ensure the accountability of individual ministries, agencies and departments mandated with specific responsibilities under the law

The *Framework* provides several benchmarks directly related to the national legal framework and it is important to stress that there are different levels of legal norms. Obviously amending a constitution is a very different matter than issuing an administrative decree! While administrative policies can generally be enacted quickly, usually some kind of legislative act is need. The Manual suggests that the legal framework for addressing displacement includes at least two elements:

- Review and analysis of existing national legislation to identify and change provisions which are incompatible with international human rights law and the *Guiding Principles*.
- Passage of national laws specifically regulating the response to internal displacement, including the prevention of arbitrary displacement

Another of the benchmarks is the development of a national policy, strategy or plan of action which may be in lieu of national legislation or may be used to implement laws which have been adopted. Such policies or strategies should:

- Identify priorities for legislative drafting and amendment
- Complement existing laws by identifying priority actions and allocating specific roles to existing national and local government departments or agencies, as well as national human rights institutions and civil society actors; and
- Create or identify a mechanism for national coordination of the response to displacement.⁷

The drafting of such policies offers an opportunity to consult with IDPs—another of the 12 benchmarks and one that many governments have found more difficult to implement. Let me give you an example of a good policy document. In February 2007, the Prime Minister of Georgia adopted the country's state strategy on IDPs which complemented an existing law on the status of IDPs which affirmed both the right of return of IDPs and also emphasized the need for measures to facilitate local integration. Notably, the participation of IDPs was an important element of the development of the State Strategy. The strategy calls for a review of existing legislation to identify and address obstacles to integration of IDPs,

⁶ *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers* (October 2008), *op. cit.*, p. 30.

⁷ *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers* (October 2008), *op. cit.*, p. 29.

designates the Ministry of Refugees and Accommodations as the leading coordination body, and calls for the adoption of an action plan to secure adequate resources for the strategy's implementation. This action plan was adopted in August 2008⁸—actually just before conflict broke out between Russia and Georgia and more people were displaced. Unlike the State Strategy, the action plan did not encompass IDP or NGO participation. The revised Action Plan, to account for the most recent wave of displacement is still pending adoption by the Government, following a (lamentably) short time-frame of one week to include consultation with IDPs in April of this year.⁹

12 benchmarks for national responsibility for IDPs:

- 1) prevent displacement and minimize its adverse effects
- 2) raise national awareness of the problem
- 3) Collect data on the number and conditions of IDPs
- 4) Support training on the rights of IDPs
- 5) create a legal framework for upholding the rights of IDPs
- 6) develop a national policy on internal displacement
- 7) designate an institutional focal point on IDPs
- 8) encourage national human rights institutions to integrate internal displacement into their work
- 9) ensure the participation of IDPs in decision-making
- 10) support durable solutions
- 11) allocate adequate resources to the problem
- 12) cooperate with the international community when national capacity is insufficient

National Laws and Policies

Against this backdrop let me turn to looking specifically at laws and policies related to internal displacement. Presently about 20 countries¹⁰ have adopted such laws and policies which can be grouped into four different approaches:¹¹

- 1) A brief instrument adopting the Guiding Principles, such as in Liberia (Instrument of Adoption, 2004).
- 2) A law or policy developed to address a specific cause or stage of displacement, such as in Serbia, Azerbaijan, Bosnia and Herzegovina, and Nepal.
- 3) A law or policy developed to protect a specific right of the internally displaced, such as Turkey's compensation law (2004) or the Hurricane Education Recovery Act in the US (2006).
- 4) A comprehensive law or policy addressing all causes and stages of internal displacement—for example, Colombia's Law no. 387 (1987) and Uganda's National Policy for Internally Displaced Persons (2004).

These and other legal and policy frameworks on displacement were developed at different stages of conflict or, as in the case of the US, in response to natural disasters; some even precede or are part of peace agreements. The 1995 Dayton Peace Accords notably established a restitution commission and

⁸ *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers (October 2008)*, op. cit., p. 29

⁹ Transparency International, "Transparency International Georgia welcomes government's decision to consult on IDP housing, calls for deadline extension," 15 April 2009, <http://www.reliefweb.int/rw/RWB.NSF/db900SID/MYAI-7R69A5?OpenDocument>

¹⁰ Colombia, Guatemala, Peru, United States, Angola, Burundi, Liberia, Sierra Leone, Uganda, India, Nepal, Sri Lanka, Tajikistan, Iraq, Turkey, Armenia, Azerbaijan, Bosnia, Georgia, Russia and Serbia. For a compilation of laws and policies on IDPs, see: http://www.brookings.edu/fp/projects/idp/idp_policies.htm.

¹¹ Wyndham (2006), op. cit.

preceded not only further displacement but a series of laws and policies regulating displacement in and from Republika Srpska, Bosnia and Herzegovina and Sarajevo Canton.¹² Bosnia's large-scale restitution system serves as a significant precedent, under which some 200,000 homes were restituted by 2004—less than ten years after the end of the war in Bosnia. Guatemala's Agreement on Resettlement of the Population Groups Uprooted by the Armed Groups (1994) preceded the peace agreement reached in 1996 which officially ended four decades of civil war.¹³ Only in a few cases—Azerbaijan, Colombia and Georgia—did national legislation on internal displacement predate the Guiding Principles. We now turn to an analysis of Colombia's legislation and policy on internal displacement.

Laws and Policies related to Displaced Children

In further reviewing the national laws and policies adopted by governments to address internal displacement, one interesting—and significant—facet is their consideration of internally displaced children and youth, who generally comprise the majority of the displaced and have special needs in situations of displacement. There are several instances of laws and policies which reference IDP children—with most focused on education-related issues. Some of these governments have included in their national legislation references to the Guiding Principles on Internal Displacement which spell out the responsibilities of national authorities vis-à-vis displaced children. Yet other countries' laws and policies directly lay out measures to provide protection of and assistance to internally displaced children.

In Georgia, the “Law of Georgia on Internally Displaced Persons - the Persecuted” provides that IDP children are entitled to free education at secondary schools and to certain higher education benefits. However, books and clothing costs are often prohibitive and the UN found growing illiteracy rates among IDP children in 2004.¹⁴ The Law of Georgia on Internally Displaced Persons (as amended 2006) provides for the extension of IDP status to a child if one or both parents are IDPs based on parental consent. In addition, Georgia's Decree #47 on Approving of the State Strategy for IDPs of 2007, considers “single mothers and their children” and orphans as among the “extremely vulnerable” IDPs, and calls for improving their living conditions and access to social services, especially healthcare and education.

The participation of children and youth is also addressed in some displacement policies, which is notable as most laws and policies on displacement do not include any such provisions. Uganda's national IDP policy calls for the “full participation” of IDPs, especially women, in the planning and management of responses. “Special efforts” are to be made “to ensure that internally displaced women and youth are consulted on matters relating to their welfare.” However, in practice, reports are that participation of IDPs has been minimal and there are indications that there is little awareness of the policy among IDPs.¹⁵ Iraq's National Policy on Displacement (July 2008) references Guiding Principle 22 and states that women, children and youth should participate in the planning, designing and implementing of return, integration and resettlement “because they know first-hand the situation on the ground and are, therefore, most fit to determine their actual needs.”

¹² See <http://www.brookings.edu/projects/idp/Laws-and-Policies/bosnia.aspx>.

¹³ See The Brookings Institution-University of Bern Project on Internal Displacement, *Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-Building*, September 2007.

¹⁴ IDMC, *Georgia: New IDP strategy awaits implementation—A profile of the internal displacement situation*, October 2007.

¹⁵ “The Implementation of the National Policy for Internally Displaced Persons in Teso,” Report submitted to DANIDA (Human Rights and Good Governance Program) and to the Coalition for Teso IDPs Rights (COTIR), August 2005. Cited in: Brookings-Bern Project on Internal Displacement, Workshop on the Implementation of Uganda's National Policy for Internally Displaced Persons, *Background Paper*, Kampala, 3-4 July 2006, p. 5.

Many governments have made positive strides in improving the plight of internally displaced children and youth in their countries by providing for them in laws and policies—and, to some degree, in practice. Despite these advancements, rigorous attention to the needs of these children and youth is lacking and implementation remains a problem in many instances. Often lacking are political will and/or resources to develop or implement national laws and policies on IDPs generally or on displaced children in particular. Awareness-raising of relevant policies and laws is also lacking in many cases. While governments may seek international assistance, “national responsibility...requires that governments devote, to the extent possible, resources to address the needs and protect the rights of their internally displaced populations.”¹⁶

The Example of Colombia

At first glance, Colombia and Turkey seem worlds apart. Both Colombia and Turkey have experienced civil conflict over a long period of time. In both cases people were displaced by insurgent activity. In both countries, the governments have depicted the conflict as the need to suppress terrorism. In both cases, displacement has occurred primarily in politically marginal areas of the country. In both cases displacement has been protracted and resolving land and property issues have been obstacles to resolving displacement. In both Colombia and Turkey, the displaced are sometimes stigmatized and often afraid to call attention to themselves as displaced. Obviously there are some important differences. The scale of displacement is much larger in Colombia where between three and four million people (between an estimated 7% and 9% of the population) have been displaced over the past two decades—the second highest number of IDPs in the world after Sudan, where IDPs account for an estimated 12% of the population.¹⁷ In contrast, in Turkey, the percentage of displaced is around 1 or 2%.¹⁸ In Colombia, displacement has taken place not only because of the actions of insurgents and paramilitary forces, but also because of economic interests, both private enterprises and those profiting from cultivation and trade of illicit drugs. In Colombia, unlike Turkey, displacement continues. Even as security has improved in the country, 300,000 more people were displaced last year. Moreover, in Colombia, IDPs have organized to form hundreds of IDP associations who are politically active and aware of their rights. Paradoxically, the level of violence against the displaced is enormous, the leaders of IDP associations have been targeted and the displaced are often afraid. Colombia and Turkey have different histories and political traditions. Colombia, in spite of its history of violent conflict and lawlessness in parts of the country, has a strong judicial tradition and courts—particularly the Constitutional Court -- have played a central role in not only interpreting the law but in making new law and holding other branches of government accountable.

But the main reason I chose to highlight Colombia is because it has perhaps the best, the most comprehensive legislation in the world. Even though there are problems in implementation, which I’ll discuss later, in many ways, Colombian laws on displacement are a model which might be useful to you.

Colombia was one of the first countries in the world to develop domestic legislation on internal displacement, predating the publication of the *Guiding Principles*. Colombia’s comprehensive legislative framework includes Law 387 of 1997 (amended in 2005) and a series of laws, decrees and declarations addressing three stages of displacement: prevention, humanitarian assistance and socioeconomic stabilization.

¹⁶ The Brookings Institution-University of Bern Project on Internal Displacement, *Addressing Internal Displacement: A Framework for National Responsibility*, April 2005, p. 24.

¹⁷ Country population estimates: United States Central Intelligence Agency, *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/index.html>.

¹⁸ Based on a study conducted by Hacettepe University Institute of Population Studies, published in 2006, which estimated the number of IDPs as between 953,680 and 1,201,000. See Turkish Economic and Social Studies Foundation (TESEV), *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey*, August 2007.

Prevention

In terms of the first stage, prevention, it is the first policy objective recognized in Colombia's Law 387 of 1997—appearing just under the title of the law, followed by “assistance, protection, socioeconomic consolidation and stabilization...”¹⁹ Part of Colombia's prevention structures include an innovative early warning system to alert the military, police and other national institutions of situations that occurred that could lead to gross violations of human rights and international humanitarian law, including forced displacement. Under the early warning system, which was strengthened by Law 812 of 2003, the Ombudsman's Office closely monitors the situation of civilians and issues reports to the Inter-Institutional Committee for Early Warning (CIAT). These reports can in turn trigger preventive responses by the national authorities. For example, the military could be deployed in an area where an alert was issued about a threat or violence against trade unionists or members of the Afro-Colombian or indigenous minorities. The system is of course not without its flaws: implementation problems include a lack of funding, coordination problems and politics.

Colombia's Law 387 stipulates that municipal committees are responsible for the prevention of displacement, through three different measures: 1). To analyze and recommend or decide on legal actions; 2). To propose “alternative conflict resolution mechanisms”; and 3). To take “assistive actions” to determine and meet the needs of the displaced.²⁰ However, some view these municipal IDP committees as ineffective, deeming them “too close to the agents of expulsion,” as some participants expressed in a workshop on the Guiding Principles held in Bogota in 1999.²¹

Other preventive measures provided for in Law 387 include establishing working groups to prevent and anticipate risks and to use law enforcement for protection.²² The law charges the Ministry of the Interior with responsibility for administering a national fund to finance or co-finance prevention and assistance programs, although this is not to replace IDP assistance efforts at all other levels of government.²³ Pursuant to Law 387, a national plan on displacement should include prevention measures.²⁴ Adopted by Decree 173 in 1998, the National Plan for Comprehensive Assistance to Populations Displaced by Violence includes a Prevention Strategy for actions by government and state bodies in coordination with territorial entities and civil society.²⁵

In addition to this framework specific to internal displacement, Colombia's Penal Code penalizes arbitrary displacement with prison sentences, fines and a ban from public office. However, forced displacement can occur “for the security of the population or for imperative military reasons, in accordance with international humanitarian law,”²⁶ two exceptions also contained in Colombia's military manual (“Basic Military Manual,” 1995) which prohibits parties to conflict from forcibly displacing

¹⁹ Law 387 on Internal Displacement (1997), available: <http://www.brookings.edu/projects/idp/Laws-and-Policies/colombia.aspx>.

²⁰ Article 8.

²¹ Internal Displacement in Colombia: Summary Report of the Workshop on Implementing the Guiding Principles on Internal Displacement, Bogota, Colombia, May 27-29, 1999, p. 8. The workshop was held by the Brookings Institution-University of Bern Project on Internal Displacement, the Colombian coalition of NGOs, Grupo de Apoyo a Organizaciones de Desplazados (GAD) and U.S. Committee for Refugees (USCR).

²² Article 14.

²³ Article 22.

²⁴ Article 10.

²⁵ Decreto Numero 173 de 1998 (enero 26), Article 2, Section 1. Available: <http://www.brookings.edu/projects/idp/Laws-and-Policies/colombia.aspx>.

²⁶ Penal Code of Colombia (as amended on 6 July 2000), Article 284A. Cited in *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers* (October 2008), *op. cit.*, p. 49.

civilians.²⁷ The Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons Walter Kälin, reporting to the UN Human Rights Council after a working visit to Colombia, noted the importance of including prevention measures in military operations, as highlighted by the Constitutional Court.²⁸

The case of Colombia shows the difficulty in translating laws into practice to prevent displacement and to promote durable solutions for IDPs. Speaking in 2000, RSG Deng highlighted these gaps, particularly noting that “protection against arbitrary displacement” was lacking in the government response. Indeed, violations of human rights and humanitarian law continue. Meanwhile, the implementation of IDP laws and policies remains incomplete and problematic in many instances owing to issues such as the inherent structural problems of the Colombian government, weak institutions, a lack of communication and coordination, competing interests of the parties involved and the lack of political will and resources, including financial.

During displacement

In addition to adopting measures to prevent displacement, national authorities have responsibilities to ensure that the rights of those already displaced are upheld. Specifically, laws and policies of the competent authorities during displacement should provide for measures which include the protection of basic economic and social rights: humanitarian aid; food, water and sanitation; basic shelter and adequate housing; health; movement-related rights; family life; education; recognition, issuance and replacement of documentation; property and possessions; employment, economic activities and social protection; and electoral rights.

Colombian IDPs benefit from an activist Constitutional Court and participate actively in promoting their rights through civil society organizations. Despite a vast legal and policy framework for addressing internal displacement, in 2004, the Constitutional Court found the government’s entire response to internal displacement “unconstitutional” in a landmark decision, T-025 of 2004. This and subsequent decisions by the court require the government both to prevent displacement and to protect IDPs. Decision T-025/04 defines the minimum standards of assistance which the government is required to IDPs and obliges the government to pass legislation to meet their needs, including by ensuring adequate resources are allocated.²⁹ In response to the T-025 decision, the government allocated greater financial resources to IDP programs and charged certain institutions with greater responsibilities.³⁰ The following year, the government adopted the National Plan for Comprehensive Attention to the Population Displaced by Violence, which addresses the three phases of displacement: protection and prevention (s. 5.1), emergency humanitarian assistance (s. 5.2), and socio-economic stabilization (s. 5.3).³¹

Colombia’s legal framework establishes a national system for providing services to IDPs (the National System of Integrated Attention to People Displaced by Violence or SNAIPD), which is coordinated by the Presidential Agency for Social Action and International Cooperation (Acción Social), while the Ministry of the Interior and Justice (MIJ) is the coordinating body between the local and national

²⁷ Colombia’s “Basic Military Manual” (1995), pp. 30 and 77. Cited in *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers (October 2008)*, *op. cit.*, p. 49.

²⁸ United Nations Human Rights Council, “Colombia continues to endure a serious displacement crisis,” 14 November 2008. Available: <http://www.reliefweb.int/rw/rwb.nsf/db900sid/EGUA-7LDUBX?OpenDocument>.

²⁹ Ibáñez and Velásquez (2008), *op. cit.*, p. 7-8.

³⁰ Ibáñez and Velásquez (2006), *op. cit.*, p.1.

³¹ The National Plan was adopted by Decree 250 of 2005, which is available at: <http://www.brookings.edu/projects/idp/Laws-and-Policies>.

authorities.³² Colombia's IDP legislation identifies three phases of assistance to IDPs: prevention and protection, emergency assistance and socioeconomic stabilization—with roles for national and local authorities in each. During the emergency phase, defined as three months, the local committees and the central institutions of the state are to offer IDPs basic services and housing.³³

Durable solutions

Colombian legislation recognizes that return is the preferred option, as long as it is sustainable both in terms of physical security and in terms of socioeconomic viability.³⁴ The third phase of internal displacement identified in Colombian legislation, as previously mentioned, is the socioeconomic stabilization phase, the general pillars of which are enumerated in Law 387 on Internal Displacement.³⁵ These programs—entailing access to health, housing, education, land, credit, training and income generation programs—aim to ensure the medium and long-term socioeconomic autonomy of IDPs in areas of voluntary return or voluntary reintegration in rural and urban areas.

The government entities charged with assistance in this phase are the National Training Service (Servicio Nacional de Aprendizaje, SENA), the Colombian Institute for Rural Development (El Instituto Colombiano de Desarrollo Rural, INCODER), Acción Social, as well as the ministries of agriculture; rural development; education; housing and the environment; and social protection. As most IDPs are not yet able to benefit from such socioeconomic stabilization initiatives, the RSG has encouraged their expansion.³⁶

Problems in implementation

One of the reasons for difficulties in implementation concerns relations between the national government—which has enacted legislation and adopted policies—and provincial and local authorities who are responsible for carrying them out on the ground. A recent study commissioned by the Brookings-Bern Project on Internal Displacement concluded that in recent years, Colombian municipalities have been given increasing responsibilities, including for IDPs, but not additional funds. Municipalities are often unaware of the particular needs of IDPs and, lacking resources and facing competing priorities, have little incentive to prioritize their needs over those of the burdened host communities. In addition, there is a lack of clarity in the division of responsibilities between territorial and national institutions and a lack of appropriate coordination mechanisms.

³² Ibáñez and Velásquez (2008), *op. cit.*, p. 5.

³³ Ibáñez and Velásquez (2008), *op. cit.*, p. 7.

³⁴ Decree 173 of 1998 adopting the National Plan for Comprehensive Assistance to Populations Displaced by Violence, Section 2.3, available in Spanish: http://www.brookings.edu/projects/idp/Laws-and-Policies/colombia.aspx#_ftn1. Return is also discussed in, e.g.,: Law 387 on Internal Displacement (1997), Article 2.6; Article 4.1; Article 10.6 and 10.8; Article 16; and Article 17, available in English and Spanish: http://www.brookings.edu/projects/idp/Laws-and-Policies/colombia.aspx#_ftn1.

³⁵ See: Law 387 on Internal Displacement (1997), Article 17. Also, see: Decree 173 of 1998 adopting the National Plan for Comprehensive Assistance to Populations Displaced by Violence; Decree No. 2569 of 2000 regulating Law 387 on internal displacement (2000); [Decree No. 250 of 2005 Concerning the Adoption of a National Plan for Comprehensive Attention to the Population Displaced by Violence](#). Available: http://www.brookings.edu/projects/idp/Laws-and-Policies/colombia.aspx#_ftn1.

República de la Colombia, Ministerio del Interior y de Justicia, Decreto Numero 250 de Febrero 7 de 2005. English summary and text of decree in Spanish available: http://www.brookings.edu/projects/idp/Laws-and-Policies/colombia.aspx#_ftn1.

³⁶ United Nations, “Representative of UN Secretary-General Concerned about Ongoing Forced Displacement Crisis in Colombia,” 14 November 2008.

For example, while the national entities charged with the socioeconomic stabilization are clearly identified, those of the local authorities are ambiguous.³⁷ In addition, coordination between state agencies and between different levels of government remains a challenge, as the Constitutional Court recognized in its T-025 decision.³⁸ The National Development Plan of 2006-2010 recognizes and seeks to redress coordination problems within the National System of Integrated Attention to People Displaced by Violence—but lacks specific measures.

These problems are due in part to the “incomplete decentralization” of the Colombian state, whereby the national government designs IDP policies in the National Council of Integrated Attention for IDPs without the participation of the “territorial” institutions (departments, districts, municipalities and indigenous territories) and accordingly delegates responsibilities—but without allocating the funds required to execute them.³⁹ Hence, this is part of the quandary the territorial institutions face and, therefore, a key obstacle to providing effective assistance to IDPs. These structural issues are not unique to IDP policies—they affect all policies.⁴⁰

In addition, the issue of internal displacement has not been integrated into the peace process nor into the transitional justice mechanisms currently being implemented.

Challenges facing governments in developing laws

It seems to me that there are 4 steps which governments need to take in order to translate the *Guiding Principles* into national policies which uphold the rights of internally displaced persons in practice:

The government:

- 1) must be aware of the displacement situation
- 2) must demonstrate political will to respond to the needs of IDPs
- 3) must be willing and able to develop an adequate legal framework to address the needs and uphold the rights of IDPs
- 4) must be able to implement these laws and policies on the ground.

The first challenge is being aware of the scope, trends, patterns, and the human consequences of internal displacement. In many countries, government officials may simply not know about the situation. They may have a vague sense that people have been forced to leave their communities because of conflict or natural disasters, but their attention is often focused on the military conflict itself or on other issues. IDPs, particularly the majority of IDPs who do not live in camps, are often ‘invisible.’ They may be deliberately keeping a low profile because of security concerns. They are often indigenous or marginalized groups or living on marginal land. Civil society organizations, such as religious groups or local human rights associations are often more aware of the presence and needs of IDPs, but may lack the means to collect data on a systematic basis or to develop effective advocacy strategies on their behalf.

The second challenge is for governments to display the necessary political will to respond to the needs of the displaced. Countries with on-going displacement often face a range of problems which demand more attention from politicians than IDPs. Thus in Colombia, the government is not only trying to respond to the needs of IDPs, but is also developing programs to demobilize paramilitary groups, combat insurgents, halt drug trafficking, and assist other victims of the conflict. In most countries, IDPs are not organized or

³⁷ Ibáñez and Velásquez (2008), *op. cit.*, p. 6.

³⁸ Manuel José Cepeda-Espinosa, “How far may Colombia’s Constitutional Court go to protect IDP rights?” *Forced Migration Review*, University of Oxford, December 2006. See also Ibáñez and Velásquez (2008), *op. cit.*

³⁹ See Ibáñez and Velásquez (2006), *op. cit.*

⁴⁰ See Ibáñez and Velásquez (2006), *op. cit.*

politically active. They usually do not vote and so are not a significant political constituency. In my country, for example, those displaced by Hurricane Katrina are dispersed around the country and politically invisible. No politician is going to reap big political gains by advocating for the displaced. In some countries, such as Sri Lanka, the government has warned that militants have infiltrated IDP camps and thus to advocate for the rights of IDPs may be seen as being ‘soft on terrorism.’ In many countries, politicians need to expend political capital to advocate for the displaced and can expect few political rewards for doing so. It is usually only when the scale of displacement is so large that it cannot be ignored or when resolving displacement is seen as key to securing peace that governments take it seriously. In Iraq, for example, even though the magnitude of displacement is very high and resolving displacement is inextricably tied to the future stability in the country, political leaders have not turned to legislative action on displacement, largely because there are so many other issues which are perceived as being more important: oil policy, and relations between the regions, and the Status of Forces agreement with the US for troop withdrawal, etc.

Third, even when political leaders are aware of the situation and want to address displacement, they have to be able to develop the legal framework—which again requires both time and political capital. To refer to my country again, even political leaders who are aware and want to do the right thing for persons displaced by natural disasters, balk at the idea of rewriting the Stafford Act—the primary law regulating response to natural disasters. It is a lot of work to change a law and many legislators may seek other means short of shepherding legislation through legislative bodies. In some cases, the government simply doesn’t have the capacity to develop the necessary legal framework for IDPs.

Finally, even when strong legislation or good national policies have been developed, there is often a lack of will or capacity to implement laws on the ground. Even countries without specific laws and policies on internal displacement, have laws that uphold basic human rights standards which apply to IDPs as well as to citizens. Often governments are unable to guarantee basic rights not only for IDPs but for many of their citizens. The gap between rights and implementation is enormous, so it should come as no surprise that this is also a major challenge for laws on displacement. Sometimes there are not enough financial resources to provide the level of assistance or compensation required for implementation of laws. Often, laws passed at the national level require implementation at the provincial or municipal levels where political will or resources (or both) may be insufficient.

For example, while Liberia adopted the Guiding Principles in whole in 2004, an implementation system was not developed. IDP camps were closed there in 2006, yet the fact that people remain internally displaced and fresh displacement has occurred reveals the shortcomings of the legislation. Gaps remain in profiling the IDPs, in providing assistance to them and in ensuring they have access to justice. Also launched in 2004, Afghanistan’s national IDP plan, which made passing reference to the Guiding Principles and identified the general roles of various ministries and international actors, received little funding. The plan, now defunct, focused on sustainable return and reintegration and recognized that IDPs have the right to be consulted in decision-making processes and to durable solutions. Efforts by the UN and the government of Afghanistan to encourage returns, as recently as 2008 and despite the lack of security, have failed. Ideally, there would be an IDP policy grounded in the Guiding Principles, with adequate funding as well as the necessary political will and human capacity to implement and monitor the policy.

Mechanisms to monitor implementation at the local level are often lacking. In some countries, such as Kenya, the National Human Rights Commission plays an important role in investigating the treatment of IDPs and bringing problems to the attention of the government. Civil society groups and NGOs are often the first to identify problems in implementation of legislation—as in Uganda—but may lack the means of systematically monitoring implementation on a national level. Under the Nepalese *Relief Program for*

Internally Displaced People Due to Conflict for FY 2004/05, monitoring and evaluation are ascribed to government officials at the central, regional and district levels.⁴¹

Effective laws and policies should also include detailed implementation and monitoring mechanisms. However, most laws and policies do not account for these key components to implementation. Uganda has a rather comprehensive national policy yet it does not treat prevention or durable solutions of return and resettlement. The policy does provide for the protection and assistance of IDPs and, notably, assigns monitoring tasks to the Ugandan Human Rights Commission.

Trends in legal developments

It is unlikely, for various reasons, that the *Guiding Principles on Internal Displacement* will soon become binding international law, but one of the important developments in recent years has been increasing interest by regional organizations in addressing internal displacement. The Council of Europe and the Organization of American States have recommended the adoption of the Principles through national legislation to their Member States. Under the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons, agreed to by 11 members of the International Conference on the Great Lakes Region, it is a legal obligation for States parties to incorporate the Guiding Principles into their domestic law. The African Union is in the process of drafting a binding Convention for the Protection and Assistance of Internally Displaced Persons in Africa States pursuant to which States parties must enact or amend relevant domestic legislation. This binding Convention will be presented at an African Union summit in Uganda in October of this year.

The Framework for Durable Solutions

IDPs have a right to durable solutions to their displacement. The Guiding Principles affirm that internal displacement should “last no longer than required by the circumstances.”⁴² Principle 28 provides that the authorities are responsible for facilitating sustainable return or resettlement and reintegration, options among which IDPs have the right to choose. Further, the responsibility of the authorities to assist in the recovery of property and possessions or in reparations is recognized in Principle 29.

As the RSG has stressed for Turkey and many other countries, there are three key elements to durable solutions: (1) voluntary return in safety and in dignity or safe conditions at areas of reintegration or resettlement; (2) the restitution of or compensation for property to the displaced and the reconstruction or rehabilitation of their houses; and (3) social and economic conditions that ensuring sustainable return and reintegration, including non-discriminatory access to public services and income-generation opportunities.⁴³

The Brookings-Bern Project, together with Georgetown University, developed a *Framework for Durable Solutions* which seeks to provide guidance about when displacement can be said to have come to an end. The study found that “internal displacement does not generally end abruptly. Rather, ending displacement is a process through which the need for specialized assistance and protection diminishes.”⁴⁴ The

⁴¹ Jessica Wyndham, “A Developing Trend: Laws and Policies on Internal Displacement,” Human Rights Brief, Washington College of Law, American University, Washington, DC, Winter 2006, p. 9.

⁴² Principle 6.3.

⁴³ United Nations, “Working Visit by the Representative of the Secretary General on the Human Rights of Internally Displaced Persons to Turkey 28 September to 1 October 2006,” October 2006, available: http://www.brookings.edu/projects/idp/rsg_info.aspx.

⁴⁴ United Nations (October 2006), *op. cit.*, p. 9.

framework further suggests that durable solutions are achieved through both the processes and the conditions of durable solutions. In general, the framework states, “it is important to consider whether:

- 1) the national authorities have established the conditions conducive to safe and dignified return or settlement elsewhere;
- 2) formerly displaced persons are able to assert their rights on the same basis as other nationals;
- 3) international observers are able to provide assistance and monitor the situation of the formerly displaced; and ultimately,
- 4) the durable solution is sustainable.”⁴⁵

The *Framework* makes it clear that ending displacement does not require that all of the needs of IDPs are met or that their social, economic, cultural and political rights are all completely guaranteed. Rather “the end of displacement is achieved when the persons concerned no longer have specific protection and assistance needs related to their having been displaced, and thus can enjoy their human rights in a non-discriminatory manner vis-à-vis citizens who were never displaced.”⁴⁶

The particular challenges of resolving long-term urban displacement

There is growing awareness of the particular issues around those who are displaced in urban areas. As the UN High Commissioner for Refugees, Antonio Guterres, recently stated, “it is clear to us that the pattern will be more and more of urban contexts of displacement and this not only changes the protection and the assistance requirements, but also changes the solutions perspective.”⁴⁷ From Iraq to Colombia to Afghanistan, people displaced by conflict are moving from rural areas, villages and towns to cities where they join the ranks of those who have migrated to urban areas for economic reasons. In many cases, this urban displacement is a long-standing, protracted situation. Thus in Sudan, urban displacement dates back to the 1980s and studies have consistently shown that IDPs in Khartoum are worse off than those in Darfur.⁴⁸

The relationship between urbanization—which is taking place in all regions—and internal displacement is a complex one. To what extent would people living in rural areas have migrated anyway to cities? To what extent do IDPs have specific needs and vulnerabilities which differ from those of the urban poor? Lyttinen in her review of the literature concludes that:

In addition to the risks that all urban poor face, IDPs who live in cities are typically bearing the supplementary risks and burdens related to their position as forced migrants. However, differences in living standards between IDPs and non-IDPs in urban areas seem to be mitigated over time. Other differences, such as lack of identification papers, and access to services and employment may pose long lasting specific needs for urban IDPs.⁴⁹

In fact, urban IDPs are often ‘hidden’ in urban communities and it is difficult to distinguish them from economic migrants or the larger population of urban poor. In some countries, IDPs are reluctant to draw attention to themselves by registering with the government (particularly when registration does not result in specific benefits) or by identifying themselves to social service providers.

⁴⁵ Ibid., p. 10

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⁴⁷ Antonio Guterres, “Keynote Address,” Ten Years of Guiding Principles on Internal Displacement: Achievements and Future Challenges, Oslo, 16 October 2008.

⁴⁸ Lyttinen, p. 25.

⁴⁹ Eveliina Lyttinen, “A tale of three cities: internal displacement, urbanization and humanitarian action in Abidjan, Khartoum and Mogadishu,” *New Issues in Refugee Research*, no. 173, Geneva: UNHCR, March 2009, p. 5.

The longer that people are displaced to urban areas, the less likely they are to return to their rural communities of origin. Moreover, generational differences are often apparent for protracted displaced families living in urban areas. While parents and grandparents may long to return to their homes in rural communities, their children have usually adapted to an urban lifestyle and are reluctant to trade urban life for rural communities. What for the parents represents a dream of “going home,” may represent a different kind of displacement for their children seems like return home, for their children may represent a different kind of exile.

Questions for Turkey

The Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons (RSG) has followed the development in Turkey of laws and policies related to internal displacement. In his working visit in 2006, he noted that “the adoption of the Van Provincial IDP Action Plan and the political support provided to it by the Government of Turkey provide a unique window of opportunity to find durable solutions for many of the IDPs and a momentum that must be seized as a matter of urgency.”⁵⁰ At that time, he outlined some of the positive components of the Van Action Plan, but noted that the implementation might be faced with the challenges of insufficient resources, weak coordination of implementation activities and lack of security in rural areas of return, including landmines and the presence of village guards that are, or might be perceived as a threat by returnees.

Based on the short comparative analysis of laws and policies on internal displacement in other countries, it is clear that there is usually a gap between the development of effective laws and their implementation in practice. I am looking forward to the next panel to hear more about your experiences in implementing the Van IDP Action Plan. In particular, it is important to identify both obstacles to implementation and strategies for addressing these obstacles. In other situations, civil society monitors have played an important role in assessing the extent to which laws and policies are being implemented on the ground.

It also may be useful to look at displacement through the lens of the *Framework for Durable Solutions*. To what extent do IDPs in Turkey have needs specifically related to their displacement? Some of the research on protracted urban displacement may also be useful: to what extent do urban IDPs in Turkey have needs that are different from those of other urban migrants? Analysis of the answers to these questions may suggest specific actions that can be taken to assess what more needs to be done to ensure that IDPs can exercise their right to make informed and voluntary decisions about whether to return, to settle where they are or to settle in another part of the country. Ending displacement, we have found, does not happen overnight, but rather is a process which requires political commitment and resources.

⁵⁰ “Working Visit of the Representative of the Secretary General on the Human Rights of Internally Displaced Persons to Turkey from 28 September to 1 October 2006—Conclusions and Recommendations,” October 2006, available: <http://www.undp.org.tr/Gozlem2.aspx?WedSayfaNo=726>