



Towards a right to security of place

by Scott Leckie

As the previous article has indicated, the success of the IDP advocacy community has had considerable success in raising the profile of IDPs and in advancing institutional attention to internal displacement. The focus, however, has been almost entirely on conflict-related displacement. All the country reports from the Secretary-General's Special Representative on Internal Displacement and the Senior Inter-Agency Network on Internal Displacement have concerned states currently or recently engaged in some form of major armed conflict. What about the millions of people displaced each year outside the context of armed conflicts, in particular those subjected to forced evictions or development-based displacement? This article argues that they should also be considered as IDPs.

The Guiding Principles on Internal Displacement clearly provide sufficient grounds for action on their behalf. Principle 6 (2c) specifically asserts that the prohibition of arbitrary displacement includes displacement "in cases of large-scale development projects that are not justified by compelling and overriding public interests".

Extending the definition of an IDP may appear academic and premature when we consider the very limited assistance that can currently be accessed by the world's IDPs. This is not necessarily the case. Identifying which groups of victims of human rights violations are to be considered as IDPs can have a bearing both on the degree of international interest they attract and whether or not their rights are respected, enforced or subject to effective remedy.

If, for example, a displaced woman is viewed as an IDP, she may stand a better chance of receiving humanitarian and legal assistance and ultimately perhaps also benefit from rights to have her property later restored to her. If, however, she is considered to fall outside the definition of IDP she may be left to fend for herself. If her experiences are essentially the same, and the rights violations she suffers more or less equivalent to those of a recognised IDP, should it really matter whether the cause of her displacement and current misery was conflict or a development project?

A forgotten category

Has the emphasis on conflict-induced displacement over the past decade

indirectly resulted in very large numbers of people being excluded from efforts to protect and monitor the rights of IDPs? Many of those forced to permanently vacate their homes as a result of development projects, slum clearance operations, urban renewal and redevelopment measures, city 'beautification' schemes, compulsory purchase orders, arbitrary land acquisition, expropriation measures ('eminent domain') or land disputes have escaped the attention of the IDP movement.

Persons evicted due to pressures of 'development' suffer very much in the same way as persons traditionally classified as IDPs. MIT's Balakrishnan Rajagopal has recently coined the term 'development cleansing' to describe processes involving direct or indirect violence, the loss of homes, lands and property due to circumstances beyond the owner's control, severe declines in their living standards and appalling housing and living conditions during their displacement. In some respects evictees may suffer even worse fates than conflict-related IDPs. Those evicted in the name of development are often prevented from organising resistance, are specifically targeted by those wishing

to take over their homes or lands and, most importantly of all, are almost never able to claim, let alone exercise, restitution rights to the housing or land from which they were evicted.

Viewed in terms of human rights violations, particularly housing rights violations, it would appear difficult to justify the continued exclusion of development-induced IDPs either on legal or on humanitarian grounds. While there may be practical obstacles to systematically considering the rights of all arbitrarily displaced persons, do we not have legal and moral obligations to do so?

Implications of expanding attention to evictees

What would be the consequences and challenges of expanding the work of the IDP movement to include evictees and victims of development-induced displacement?

It is clear that the recognised global IDP population would grow. We should not be daunted by this challenge but embrace the opportunity to provide graphic evidence of the fact that the severity and scale of the global displacement dynamic are far greater than has been commonly assumed. By expanding the population of concern we would make major strides towards ensuring that all displaced persons are given the international attention and assistance they deserve.

Opportunities to prevent displacement would increase. Almost all instances of development-induced displacement and forced evictions are planned or foreseen in law or policy. They are often publicly announced prior to being carried out. It is common for executive or ministerial decrees, judicial decisions or military orders to be issued prior to an eviction or for planned evictions to be included within announced government development programmes. These features substantially increase the possibilities of preventing displacement before it is carried out. Treating non-conflict-induced evictees as IDPs would enable the UN to play a much more pro-active role in stopping evictions before they are carried out. If the OCHA Network or the Special Representative were to get involved in cases of planned forced eviction, the preventative capacity of the position would surely be greatly enhanced.

New emphasis on housing rights

While all types of displacement ultimately involve the loss, whether continuous or temporary, of the right to reside within a particular home in a particular place, forced evictions are intended to be permanent. It is for this reason that the bulk of UN pronouncements on forced evictions have taken place within the context of violations of the right to adequate housing.²

The international normative framework for addressing these types of evictions and development-induced displacement using human rights principles is clearly in place. The past decade has been witness to significant advances in housing rights law and to the human rights features of the forced eviction process.³ In addition to more widely known standards (including the Guiding Principles), a far lesser known set of very detailed Comprehensive Human Rights Guidelines on Development-Based Displacement, approved by a UN expert group in 1997, provides extensive coverage on how evictions should be treated when they coincide with development projects.⁴ These Guidelines are as legally binding as the Guiding Principles (in that neither have been formally approved by states, even while both are a reflection of existing international law), and could easily be incorporated into the work of the IDP movement as a means of applying more stringent human rights norms to non-conflict-induced displacement.

The IDP advocacy movement increasingly recognises that housing is a major assistance need for IDPs. Taking housing rights seriously could form a central element of the regular need to move programmes from relief to development. An initial meeting exploring the link between housing rights and IDPs was held in July 2001 and found considerable scope for focusing attention on the housing dimensions of displacement.⁵

Giving teeth to a right to security of place

Should the IDP movement go down the path indicated above, it may be useful to reflect on one further notion, which could be labelled a right to security of place. Rather than

developing a negatively defined 'right not to be displaced, a more affirmative right to security of place would be an amalgam and convergence of civil, political, economic, social and cultural rights directly linked to preventing and remedying displacement. It would recognise that everyone everywhere has an enforceable and defensible right to physical security and rights to housing, property and land, including rights to security of tenure. Security of tenure is a relatively new term to the human rights community and the IDP movement but one with tremendous potential in terms of preventing arbitrary displacement or eviction before it occurs. The right to security of place would be as relevant to times of peace as it would be to times of armed conflict or humanitarian disaster.

Such a right makes no presumption that one form of tenure is necessarily preferred over another. In other words, owners, tenants, traditional occupants, squatters and all other types of tenure groups could be protected. The right to security of place would go beyond security of tenure alone. The stability of the home would form the starting point from which supplementary rights spring. Such a right to security of place would strengthen the rights of all IDPs by providing a conceptual means to plug the gap in the interest and institutional protection given to those forced from their homes due to forced evictions and development-induced displacement.

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1. Balakrishnan Rajgopal 'The Violence of Development', *Washington Post* (8 August 2001).

2. Scott Leckie (1999) 'New United Nations Regulations on Forced Evictions: General Comment No. 7 Strengthens Right Not to be Evicted' in *Third World Planning Review*, vol. 21, no. 1, February 1999, pp. 41-61.

3. See COHRE 'Sources No. 3 Forced Evictions and Human Rights: A Manual for Action', 1999, Geneva.

4. In June 1997, UNHCHR-convened seminar adopted a far-reaching document entitled Comprehensive Human Rights Guidelines on Development-Based Displacement (contained in UN document: E/CN.4/Sub.2/1997/7). Some of its more innovative concepts include: the obligation of maximum effective protection against displacement, the obligation to prevent homelessness, the obligation to expropriate only as a last resort, the right to the integrity of the home, and legal assurances of security of tenure.

5. Housing and Property Rights for IDPs: Where to go from here?, 3 July 2001, sponsored by COHRE and the Global IDP Project.