

The role of the Guiding Principles on Internal Displacement

by Walter Kälin

The Guiding Principles provide an important framework for protection. To make them more effective on the ground, however, governments now need to take steps to incorporate them into national legislation.

What has become known as the ‘protection gap’ is one of the main problems faced by millions of internally displaced people around the world. A recent study found that the UN’s approach to internal displacement is “still largely ad hoc and driven more by personalities and the convictions of individuals on the ground than by an institutional system-wide agenda” and suffers “from a lack of political and financial support from UN headquarters and UN member states.”¹ In addition, many countries with internally displaced populations are unwilling to protect the rights of those affected or lack the capacity and tools to do so.

The Guiding Principles on Internal Displacement draw their authority from the fact that they are based upon, reflect and are consistent with international human rights law and international humanitarian law, as well as international refugee law where it can be applied by analogy. Yet the Guiding Principles go beyond a simple compilation and restatement of those human rights and humanitarian law guarantees that are applicable to situations of internal displacement. They provide a fully-fledged framework for identifying protection needs and for planning, implementing and monitoring protection activities. In order to strengthen these functions, the Guiding Principles now need to be incorporated into domestic laws and policies.

A broad understanding of protection

One reason why international agencies as well as national governments fail to adequately protect internally displaced people may be their limited understanding of what protection means. Governments at

times deny protection to internally displaced people by limiting the definition to victims of insurgents, thus excluding, for example, those fleeing the armed forces of the State. International agencies may limit their protection work to saving lives in emergency situations.

The Guiding Principles help to overcome these limitations. Their definition of ‘internally displaced’ includes all those who have left their homes and places of habitual residence **involuntarily**, whatever the circumstances, and have not crossed an international frontier. Furthermore, they address the full range of rights that may become relevant for protection against displacement, during displacement and in the context of return or resettlement once durable solutions become possible. In doing so, they reflect the fact that internally displaced people remain citizens of the country they are in and do not lose, as a consequence of being displaced, the rights granted to the population at large.

The conceptual approach of the Guiding Principles thus facilitates a broad understanding of protection which encompasses “all activities aimed at ensuring 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 law, international humanitarian law and refugee law.”² Such activities should ensure the cessation, non-recurrence and prevention of violations and that victims of violations be provided with effective remedies including reparation, rehabilitation or compensation.³ From a rights perspective, it is important to stress that such protection must not be limited solely to the survival and physical security of IDPs but should cover all guarantees provided by international human rights and hu-

manitarian law, including protection of property, access to documents and participation in elections (even before return to the habitual place of residence).

All the rights enshrined in the Guiding Principles are equally important, as mere survival without dignity is intolerable, whereas dignity cannot be enjoyed without survival. However, in practice, not all rights are equally important in each situation of displacement. Which of the different protection needs of IDPs are at the forefront depends on the specific context. It is also clear that agencies and organisations with specific and limited mandates cannot address all protection needs at the same time. Similarly, the ministry or department responsible for IDPs in a specific country may not have the authority or capacity to deal with all the problems they face. However, the Guiding Principles make it possible both to systematically analyse and identify the main protection needs (by asking to what extent the displaced encounter problems related to rights set out in each Principle) and to facilitate the tasks of determining action needed and assigning respective roles and responsibilities to governments, the UN and civil society. In this way, comprehensive policies and plans of action can be developed that cover all the relevant protection needs of internally displaced people in a given situation and do not neglect the protection of rights that are not in the forefront of humanitarian action.

Incorporating the Principles into domestic law

The Guiding Principles restate, in greater detail, many of the existing legal provisions which respond to the specific needs of IDPs. Experience shows that their connection to existing law is recognised and acknowledged by many governments which, at the same time, prefer to discuss their application without having to consider the issue of legal obligations. For this and other reasons,⁴ it is doubtful, at least for

the time being, whether turning the Guiding Principles into a binding UN Convention would be feasible or even desirable.

However, this does not mean that no steps to enhance the standing of the Guiding Principles should be taken. Several countries - including Angola, Burundi, Colombia, Peru, the Philippines, Sri Lanka and Uganda - have made explicit reference to the Principles in their national laws and policies on internal displacement. However, as encouraging as this development is, some of the resulting laws and policy documents have not clarified how the rather abstract general principles of international law articulated by the Guiding Principles should be translated into concrete action on the ground. I therefore plan to develop, in consultation with relevant actors, a manual that will provide law and policy makers with detailed guidance as to the content, institutional arrangements and

procedures necessary to make the Principles operational at the domestic level.

I welcome the UN Secretary-General's report *In Larger Freedom: Towards Development, Security and Human Rights for All*.⁵ He emphasises that it is in each country's self-interest to address all situations of internal displacement effectively and thus urges Member States to accept the Guiding Principles on Internal Displacement as the basic international norm for protection of IDPs and commit themselves to promoting the adoption of these principles through national legislation. It is to be hoped that Heads of State and Government who will gather at the UN General Assembly in September 2005 will heed this call. This would certainly be an important step in strengthening the Guiding Principles as an important tool for advocating and strengthening the human rights of internally displaced people.

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1. *Protect or Neglect: Toward a More Effective United Nations Approach to the Protection of Internally Displaced Persons*, Simon Bagshaw and Diane Paul, Brookings-SAIS Project on Internal Displacement and OCHA's Inter-Agency Internal Displacement Division, Nov 2004, at www.brookings.edu/fp/projects/idp/protection_survey.htm.
2. 'Implementing the Collaborative Response to Situations of Internal Displacement, Guidance for UN HC/RCs and Country Teams', Inter-Agency Standing Committee, Sept 2004, www.idproject.org/IDP_documents/IDPPolicyPackage.pdf
3. Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, submitted pursuant to Commission on Human Rights resolution 2004/55, E/CN4/2005/84, 31 Dec 2004, para 43.
4. See Walter Kälin 'How hard is soft law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework' in *Recent Commentaries about the Nature and Application of the Guiding Principles in Internal Displacement*, Brookings-CUNY Project on Internal Displacement, April 2002.
5. www.un.org/largerfreedom