

FORCED MIGRATION

17

May 2003

review

When does internal displacement end?

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The Brookings-SAIS Project
on Internal Displacement



Institute for the Study
of International Migration

Forced Migration Review

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, Spanish and Arabic by the Refugee Studies Centre/University of Oxford in association with the Global IDP Project/Norwegian Refugee Council. The Spanish translation, *Revista de Migraciones Forzadas*, is produced by IDEI in Guatemala.

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from the editors

We are extremely grateful to Erin Mooney and Susan Martin for guest-editing this issue's feature section on 'when does internal displacement end?' – and to their organisations for providing financial support. With this mailing you will also receive a conference report: 'Researching Internal Displacement: State of the Art'. Its production was made possible by funding from NTNU (Norwegian University of Science and Technology) and DFID (UK Department for International Development), to whom we offer many thanks. This and all FMRs are available at www.fmreview.org.



Corinne Owen

We are changing the format of one of FMR's regular features: the **RSC page**. Starting with this issue we will be presenting short thought-provoking commentaries written by a researcher at the RSC. Agnes Hurwitz kicks off the new look with a commentary on Iraq and the international rule of law.

FMR 18 will include a feature section on **humanitarian logistics** (produced in collaboration with the Fritz Institute). If you would like to contribute a short report/article relating to logistics and/or Iraq, please contact us immediately.

The feature section of FMR 19 will focus on **reproductive health for refugees**. We are working with the Reproductive Health for Refugees Consortium in preparing this issue (see p54 for conference announcement) and welcome articles on this subject. Deadline for submissions is 1 October.

With our best wishes

Marion Couldrey & Tim Morris
Editors, Forced Migration Review

from the guest editors

"When does internal displacement end?" is a question frequently posed by policy makers, practitioners and researchers engaged with the internally displaced but which lacks a clear answer.



At the request of the Representative of the Secretary-General on Internally Displaced Persons, we have been exploring this question through research as well as a series of consultations. Through the feature section of this FMR, we have been able to broaden this process by tapping into the thinking of an array of experts on different aspects of the subject. The aim is to provide guidance on when displacement ends to UN and other international agencies, as well as governments, NGOs, researchers and, certainly, internally displaced persons themselves.

We are extremely grateful to all of the contributors, whose enthusiasm in participating in this project is an indication of strong interest in the subject around the world and whose insights have been most valuable in furthering our own thinking. Our special thanks go to the editors of FMR for their consistent help and encouragement. We hope that FMR readers will find this collection of articles of interest, advancing our collective thinking on this critical question.

Susan Martin, Georgetown University's Institute for the Study of International Migration, and Erin Mooney, Brookings Institution-SAIS Project on Internal Displacement

Front cover photos: Returned IDP women in Angola · Nina Birkeland.

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Bringing the end into sight for internally displaced persons

by Erin Mooney

When does internal displacement end? In other words, when, in any particular situation, should internally displaced persons (IDPs) no longer be regarded as such?

Some might query whether it is too early to even be asking this question. It is only in very recent years, after all, that awareness and concern have been raised of the plight of IDPs, their specific needs and vulnerabilities, and that focused attention has begun to be devoted to developing effective international and national responses. However, there are a number of compelling reasons for addressing this question:

- Because decisions that internal displacement has ended inevitably lead to the termination of programmes addressing IDPs' particular needs and indeed to IDPs effectively disappearing as a specific group of concern, it is critical to understand the basis on which such decisions are made and the extent to which they match objective realities on the ground.
- Knowing when internal displacement ends is also important to determining when national as well as international responsibility, attention and resources should shift from a specific focus on the needs and vulnerabilities of IDPs to a holistic, community-wide approach of rehabilitation and development for societies as a whole.
- Organisations and researchers engaged in compiling IDP statistics need to know **when** to stop counting. They point out that one of the reasons why it has been difficult to reach agreement on IDP figures has been the lack of clarity on when an IDP should cease to be considered as such.
- Operational agencies, NGOs, donors and governments require data on the number of IDPs in order to formulate programmes, policies and

budgets for effectively addressing their needs. Yet, owing to varying interpretations as to when displacement ends, the figures they use often differ dramatically, impeding a coordinated approach.

- Most importantly, IDPs themselves are entitled to know when the benefits and entitlements, as well as any restrictions and risks, that their designation as such entails will cease.

Answering the question of when displacement ends is not simply an academic or theoretical exercise. It can have a tremendous impact on the lives of IDPs and respect for their rights.

A question in search of answers

Currently, decisions on when internal displacement ends are made, if at all, on an *ad hoc* and arbitrary basis. Moreover, the methodologies used and, consequently, the conclusions reached differ among actors, often dramati-

ly. For example, the Global IDP Database reports that estimates of the number of IDPs in Guatemala range from zero to a quarter of a million. In Rwanda, serious differences of opinion arose among various UN agencies and offices, all using different criteria, on the issue of whether the hundreds of thousands of IDPs resettled as part of the 'villagisation' programme in the late 1990s should still be considered IDPs.

Appreciating that "operational demands ... increasingly dictate the need for a coherent response", the UN Office for the Coordination of Humanitarian Affairs (OCHA) has turned to the Representative of the Secretary-General on IDPs for advice and guidance "indicating when generically an individual would not only become an IDP but ... should no longer be considered under this category." Though "the question is not new," OCHA noted, "the answer has hitherto been quite elusive."¹

The Brookings-SAIS Project on Internal Displacement (which the Representative co-directs), in partnership with Georgetown University's Institute for the Study of International Migration, has been exploring this issue through research and a series of



consultations with international agencies, international and local NGOs and other researchers with a view to developing criteria as to when internal displacement ends.²

Three lenses

In examining this issue, we first looked through three different lenses.³

1. The Guiding Principles on Internal Displacement

The Guiding Principles, which spell out the rights and guarantees pertaining to IDPs in all phases of displacement, stipulate that "displacement shall last no longer than required by the circumstances".⁴ Yet, the Principles do not contain a cessation clause as to their application. This was not an oversight on the part of the drafting team but a deliberate decision based on the fact that the definition of IDPs used in the Principles is not declaratory but descriptive in nature, denoting the factual situation of being displaced within one's country rather than conferring a legal status to be granted, much less revoked (see Kälin).

For IDPs who remain in their country of origin, the Guiding Principles envisage three possible solutions to their displacement: (i) **return** to their home areas or place of habitual residence; (ii) **(re)settlement** in the localities where they go to once displaced; (iii) **resettlement** in another part of the country. The Principles specify a responsibility on the part of national authorities to facilitate these solutions and also stipulate a number of conditions to be met:

- return or resettlement to occur voluntarily and in "**safety and dignity**"
- **non-discrimination**, including the ability to participate fully and equally in public affairs and to enjoy equal access to public services
- assistance for **recovery or compensation for property and possessions** destroyed or of which they were dispossessed as a result of their displacement

These additional provisions suggest that, from the standpoint of international law, solutions for IDPs entail more than simply the physical movement of returning or resettling but

also require putting in place conditions to ensure the effectiveness of these solutions.

2. The refugee experience by analogy and implication

The 1951 Convention contains cessation clauses stipulating when an individual would no longer be eligible for refugee status and the international protection it affords, in particular when "the circumstances in connection with which [s/]he has been recognized as a refugee have ceased to exist" (see Bonoan). Though direct analogies with refugee law are difficult because, unlike the Guiding Principles, it concerns a specific legal status, it is nonetheless important to consider the possible implications that the cessation of refugee status can have on the temporal nature of internal displacement.

Application of the cessation clauses for refugees may lead to an automatic assumption that internal displacement has ended as well. For instance, UNHCR's decision to end refugee status for refugees from Mozambique as of 31 December 1996 was a decisive factor in determinations that there were no longer any IDPs in the country. Yet, that same month when the Representative of the Secretary-General on IDPs visited the country, he found that "despite the decision by the Government and the donor community to no longer target displaced groups, this in no way means that all internally displaced persons have returned." Among the reasons cited by the displaced was "a lack of confidence in the durability of peace, sometimes coupled with a reluctance to return to the area where they had experienced terror."⁵ The return of refugees or cessation of refugee status therefore is not necessarily a determining factor of when **internal displacement ends**.

Indeed, the cessation of refugee status may actually lead to an increase in the number of IDPs. Refugees may be compelled to return to their country but be unable to return home and even displaced anew, internally. This was the case in Bosnia after the Dayton Agreement. A similar phenomenon reportedly has been occurring in Afghanistan in the context of the mass refugee returns that have been taking place over the past year.

There is a need for a comprehensive approach to the issue of when displacement ends that takes into account the effects of such determinations for both refugees and IDPs.

3. Cases of internal displacement

Our review of numerous situations of internal displacement,⁶ including several also examined in this issue of *FMR*, confirms that there is no systematic approach to the issue of when internal displacement ends. For example, in some cases it is the capacity or willingness of the government to provide emergency humanitarian assistance, rather than the actual duration of the state of displacement, that is the deciding factor (see Fernandez and Vidal). In others, a date is announced when all IDPs in a country, sometimes numbering more than one million, will suddenly all cease to be considered as such (see Duncan). In still other cases, internal displacement ends as a punitive measure and for the most minor of acts of omission such as failure to do household chores in the communal centre where IDPs are staying (see Beau). In many cases, the approaches used violate the rights of the internally displaced. Less arbitrary approaches to when internal displacement ends are needed.

Possible criteria

Having examined the issue through these lenses, three sets of possible criteria have come into focus.⁷

1. Cause-based criteria: One way to look at the issue would be to focus on the causes of internal displacement and, borrowing from the refugee analogy, consider the existence of "changed circumstances" from those that had compelled flight in the first place, such as the end of a conflict or a change in government such that there is no longer a well-founded fear of persecution. Specific criteria could be developed to address situations of displacement due to natural disasters and, separately, development (see Cernea).

The experience in post-conflict Bosnia and now Afghanistan, however, suggests that even when the immediate causal factors of displacement cease to exist, a durable solution to the plight of displaced persons does not

necessarily follow. In the reverse scenario, when the cause of displacement persists indefinitely – for instance when displacement is due to a conflict that appears to have no end in sight – one must ask whether it is in the best interests of the displaced to continue to consider them as such.

Governments, after all, may find it politically expedient to maintain IDPs, sometimes for decades, in a state of limbo unable to return in the absence of a peace settlement but equally unable to integrate into the localities where they fled – such that IDPs effectively become hostages to this label, as in Georgia and Azerbaijan (see Borsotti).

IDP children forage in refuse bins for food, Luanda, Angola.

Basing decisions simply on cause-based criteria can end displacement prematurely or, as the original causes persist, perpetuate a state of displacement indefinitely and even to the detriment of the displaced.

2. Solutions-based criteria: Another possible approach emphasises the ability of IDPs to either return to their home communities or (re)settle in another community. For some analysts, the only true solution for IDPs is return, as the reversal of the physical movement that displacement, by definition, entails (see Frelick). The possibility of return, regardless of whether or not an IDP seizes the opportunity to do so, is the criterion that has been favoured by the US Committee for Refugees. On this basis, USCR deemed displacement to have ended in Guatemala in 1998, two years after the conflict ended. Similarly, in mid-2002, both the government and international agencies in Sierra Leone decided after a mass resettlement and return process that there were no longer any IDPs in the country (see McGoldrick). In both cases, however, these decisions have been strongly challenged on grounds that include: lack of safety in areas of return; inadequate reintegration assistance; lack of property compensation; the problem of illegal occupation of land; and the inability of IDPs who returned to vote, access public services or obtain identification documents for their children.

In Rwanda, the mass resettlement of IDPs as part of the ‘villagisation’ programme led a number of UN agencies, all using different criteria, to conclude in 1999 that there were virtually no



IDPs left in the country. However, those resettled were found to suffer basic humanitarian needs and inadequate access to land and means of self-sufficiency (see Zeender). Moreover, reports from both within and outside the UN voiced serious doubts as to the voluntariness of the operation, which was an issue also in Sierra Leone.

These and other cases call into question whether simply the act of return or resettlement – a mere “change of address” in Beau’s words – is an adequate basis on which to deem displacement to end.

3. Needs-based criteria: A third possible approach would look for when the needs and vulnerabilities specific to IDPs no longer exist. These criteria would apply to IDPs who are able to access the protection and assistance of their national governments, no longer have unmet needs on the basis of being displaced and therefore do not require special international protection and assistance. The IDPs need not necessarily have permanently resettled or returned and may still be in need (due to poverty or disability for instance) but they would no longer have specific protection, assistance and reintegration needs, different from the rest of the population, which can be attributed to their displacement and which require special attention. The Guiding Principles point to needs that would be relevant in this regard, for instance in the area of protection, lack of shelter and other deprivations resulting from displacement, documentation, and recovery of or compensation for property lost as a result of displacement.

An integrated approach

These three sets of criteria are not mutually exclusive but rather include overlapping elements. Indeed, the emerging consensus confirms the need for an integrated approach that combines solutions-based and needs-based sets of criteria to ensure that IDPs have options – to return, resettle or integrate locally – and that the specific needs and vulnerabilities created by displacement are addressed so that these solutions are effective and durable, all the while recognising that cause-based criteria will often be an enabling factor. Exactly what “durable solutions” mean for IDPs will need to be spelled out by means of cause-based and especially needs-based benchmarks measuring, as Bettocchi and Freitas suggest, both the general protection climate as well as the specific re-integration needs of IDPs in three aspects: legal, social and economic. These benchmarks, which can be derived from the rights, responsibilities and needs already identified above and, more comprehensively, from the Guiding Principles as a whole, could then constitute the basis for determining when, in any given situation, IDPs no longer need to be a subject of specific international attention and assistance.

It is important to recognise that the benchmarks being developed are certain to be met only gradually. This argues strongly against arbitrary announcements of displacement ending on a specific date or as soon as return or resettlement occurs and instead in favour of sustained monitoring of the situation of IDPs once the solution phase begins to get

underway. For IDPs even more so than for refugees, however, there is little information and analysis on what happens to people once they return or resettle. Susan Martin's article on Burundi strongly underscores this point. Assessment of the conditions upon return, resettlement or local integration, for instance using the benchmarks being developed, is therefore critically important for verifying the durability of solutions and for identifying areas where continued support, especially as regards protection (see Cohen) and reintegration assistance for IDPs (see Fagan), is required to underpin them. As the case study on current challenges in Sri Lanka illustrates (see Ariyaratne), return or resettlement is really just the beginning of what will be a gradual process of reintegration that requires support; for some time after returning or resettling, IDPs are likely still to have distinct needs requiring particular attention. In the longer term, support for durable solutions will no doubt still be required but could switch to more generic, community-wide approaches based on vulnerability rather than whether or not a person was once internally displaced.

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1. Letter from the UN Deputy Emergency Relief Coordinator to the Representative of the Secretary-General on IDPs.
2. Documents, including background papers and summary reports of consultations prepared in connection with this research project, are available on the Brookings-SAIS Project on Internal Displacement website: www.brook.edu/fp/projects/idp/idp.htm
3. Erin Mooney, *An IDP No More? Exploring the Issue of When Internal Displacement Ends* (April 2002). See: www.brook.edu/fp/projects/idp/idp.htm
4. Principle 6.3, *Guiding Principles on Internal Displacement*, UN Doc. E/CN.4/1998/53/Add.2
5. UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons. Profiles in Displacement: Mozambique*, UN Doc. E/CN.4/1997/43/Add.1, para. 26.
6. See in particular, Mooney, *An IDP No More?*, op. cit.
7. Susan Forbes Martin and Erin Mooney, *Criteria for Determining the End of Displacement: Options for Consideration* (September 2002). See www.brook.edu/fp/projects/idp/idp.htm



The Brookings-SAIS Project on Internal Displacement



The Brookings-SAIS Project on Internal Displacement seeks to promote more effective national, regional and international responses to the global crisis of internal displacement. It supports the mandate of the Representative of the UN Secretary-General on Internally Displaced Persons, Francis Deng (appointed in 1992), to monitor displacement problems worldwide; undertake fact-finding missions; dialogue with governments; develop and promote application of the Guiding Principles on Internal Displacement; and undertake research to enhance understanding of the problem and identify strategies for response.

The Project organises regional and national seminars and workshops and also works with civil society groups around the world. It prepared the two-volume study *Masses in Flight: The Global Crisis of Internal Displacement* and *Forsaken People: Case Studies on Internal Displacement* (Brookings, 1998) and has published numerous studies, reports and practitioners' handbooks on various aspects of internal displacement. Established in 1994, the Project is co-directed by Dr Deng and Roberta Cohen.

For more information, see www.brook.edu/fp/projects/idp/idp.htm or contact Gimena Sanchez: Tel. +1 (202) 797 6145. Email: gsanchez@brookings.edu



The Institute for the Study of International Migration (ISIM),

founded in 1998, is part of Georgetown University's Edmund A Walsh School of Foreign Service, in affiliation with Georgetown University's Law Center. ISIM focuses on all aspects of international and internal migration,

including the causes of and potential responses to population movements, immigration and refugee law and policy, comparative migration studies, the integration of immigrants into their host societies, and the effects of migration on social, economic, demographic, foreign policy and national security concerns.

Additionally, ISIM offers a certificate programme for Masters level students who have a career interest in human rights and humanitarian issues, with special focus on refugee crises and post-conflict situations. The certificate programme prepares students to work in international organisations, government and private agencies specialising in emergency relief, human rights and humanitarian activities.

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Return of IDPs to East Timor, from West Timor.

UNHCR/M Kobayashi

Cessation of refugee status: a guide for determining when internal displacement ends?

by Raphael Bonoan

Many of the circumstances that lead to internal displacement are similar or identical to those that cause individuals to develop a "well-founded fear of persecution" and seek international protection as refugees.

Moreover, the potential consequences of withdrawing protection prematurely or erroneously from IDPs and refugees can be equally harmful. Over the past three decades, standards and procedures have been developed through extensive dialogue between UNHCR and states parties to the 1951 Convention Relating to the Status of Refugees for determining when refugees may no longer require international protection because of changes in circumstances in their country of origin. These standards and procedures are based on Articles 1 C (5) and (6) of the Convention, which specify that a refugee shall no longer be considered as such when "the circumstances in connection with which he [or she] has been recognized as a refugee have ceased to exist".

The process of cessation of refugee status may, therefore, serve as a useful framework for determining when internal displacement ends by providing a mechanism for ascertaining whether changes in circumstances have removed the causes of displacement as well as safeguards against the wrongful termination of protection.

UNHCR guidelines on the interpretation and implementation of the 'ceased circumstances' provisions of the cessation clauses set forth two basic standards by which developments in the country of origin are to be evaluated.¹ Firstly, they must be 'fundamental' in character, i.e. developments that completely transform the political and social structure of the country of origin as well as its human rights situation.² These

include: democratic elections, declarations of amnesties, dismantlement of former security services, the establishment of an independent judiciary, adherence to international human rights and the creation of national institutions to protect human rights. Such reforms must also be evaluated "in light of the particular cause of fear" to ensure that they "remove the basis of the fear of persecution."³

The second basic standard is that of durability, i.e. changes in circumstances of a 'fundamental' nature must prove to be stable. UNHCR has suggested a minimum waiting period of 12 to 18 months to allow such consolidation to occur but also stated that this period may vary depending on the nature of the transition in the country of origin. In the context of a peaceful transition to democracy, changes in circumstances may consolidate rapidly. Conversely, developments that occur in a post-conflict environment or one of continuing violence and insecurity may require more time to become firmly established.

Since 1973, UNHCR has applied Articles 1 C (5) and (6) to refugee populations under its mandate on 22 occasions. This process involves: a) evaluating the extent and durability of change in the country of origin; b) assessing the implications of cessation for refugees and all countries involved; and c) developing specific procedures for implementing the 'ceased circumstances' provisions, such as notifying and screening refugees, arranging for repatriation and identifying alternative durable solutions for those who will not be repatriating.

To assess developments in a country of origin, UNHCR not only collaborates with the governments of countries of origin and asylum but also consults various UN agencies, international organisations, human rights groups and other nongovernmental partners. Detailed information is gathered on the: development of new political institutions; integrity of electoral processes; performance of law enforcement agencies and judicial institutions; respect for freedom of expression, movement, association, and other human rights; treatment of national, ethnic, religious minorities, and returnees; perspectives of refugees on conditions in the country of origin and the possibility of return; and implementation of peace accords (if applicable). By thoroughly analysing developments in these areas, UNHCR can establish whether the grounds for refugee status have, in fact, been removed and international protection

can be safely withdrawn. While UNHCR rigorously evaluates conditions in a country of origin, it implements the 'ceased circumstances' provisions with some flexibility. The clauses themselves contain an exemption for those refugees who have suffered such severe persecution that they cannot be expected to repatriate. In addition, refugees affected by the application of Articles 1 C (5) and (6) are given the opportunity to request an exemption from cessation and the continuation of international protection. UNHCR occasionally excludes from the application of the 'ceased circumstances' provisions a specific group of refugees that, despite changes of a 'fundamental' and 'durable' nature in their country of origin, may still face persecution upon return.⁴ UNHCR has also been known to restrict the scope of a declaration of cessation, targeting a specific subgroup of refugees within a larger refugee population.⁵ This flexibility provides another important safeguard against the withdrawal of international protection from refugees who continue to need it.

Because the Guiding Principles do not assign IDPs a legal status to which specific rights are attached, defining a cessation clause for IDPs analogous to Article 1 C of the Convention may be inappropriate [see Kalin, p15].

Nevertheless, it may be useful to suggest in general terms the possibility for situations of internal displacement to come to an end because of changed

circumstances and to provide guidance for making such a determination. This guidance will need to address a number of issues. How should developments related to situations of internal displacement be evaluated? What roles should international agencies, states, NGOs and others play in this process? What safeguards are necessary to ensure that protection is not withdrawn from IDPs who still need assistance? UNHCR standards and procedures for applying Articles 1 C (5) and (6) of the Convention may be instructive in this regard. In the absence of such guidance, however, determinations of when internal displacement ends will continue to be *ad hoc* and/or inconsistent and the risk of premature or wrongful withdrawal of protection from IDPs heightened.

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See Joan Fitzpatrick and Rafael Bonoan, 'Cessation of Refugee Protection' in *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, forthcoming July 2003).

1. UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, 1979, re-edited 1992), paras. 135-139; Executive Committee of the High Commissioner's Program, Conclusion No. 69 (XLIII), 1992, UN doc. A/AC.96/804; UNHCR, "Note on the Cessation Clauses," UN doc. EC/47/SC/CRP.30, 30 May 1997; and UNHCR,

"Guidelines on the Application of the Cessation Clauses," UN doc. UNHCR/IOM/17/99, UNHCR/FOM/17/99, 26 April 1999. Clauses," UN doc.

UNHCR/IOM/17/99, UNHCR/FOM/17/99, 26 April 1999.

2. Executive Committee of the High Commissioner's Program, Subcommittee of the Whole on International Protection, 'Discussion Note on the Application of the "Ceased Circumstances" Cessation Clause in the 1951 Convention', UN doc. EC/SCP/1992/CRP.1, para. 11, 20 Dec. 1991.

3. UNHCR, "Note on the Cessation Clauses," para. 19.

4. See UNHCR, "Applicability of the Cessation Clauses to Refugees from Chile," UN doc. UNHCR/IOM/31/94, UNHCR/FOM/31/94, 28 March 1994, para. 5(i).

5. See UNHCR, "Applicability of the 'Ceased Circumstances' Cessation Clauses to pre-1991 refugees from Ethiopia," UN doc. UNHCR/IOM/91/99, UNHCR/FOM/91/99, 23 September 1999.



UNHCR protection officer with returnee women in Laos.

Displacement without end: internally displaced who can't go home

by Bill Frelick

There is relatively little doubt about when refugee status ends. The 1951 Refugee Convention clearly spells out that refugee status ends when the refugee is no longer in need of protection. The fundamental principle underlying the refugee definition is not movement across a border but protection or the lack thereof from the government of his/her home country.

In contrast, the most widely accepted definition of an internally displaced person (found in the Guiding Principles on Internal Displacement) fails to mention protection and does not clearly delineate when a person ceases to be internally displaced. That definition rests fundamentally on the notion of movement – that IDPs have been “forced or obliged to flee or to leave their home ... and have not crossed an internationally recognised State border.” Likewise, the final section of the Guiding Principles – dealing with return, resettlement and reintegration – makes no mention of the word protection but rather emphasises return movement or resettlement.

Principle 28 calls upon competent authorities to allow IDPs 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.” Authorities are not specifically called upon to offer protection but rather to “endeavour to facilitate the reintegration of returned or resettled internally displaced persons.” Principle 29 calls for nondiscrimination towards IDP returnees and their right to equal access to public services, and suggests that IDPs have a right either to recovery of their abandoned property/possessions or to compensation. It does not specifically say that IDPs who have relocated and reintegrated to another part of their country (presumably re-availing themselves of the protection of their government) have ceased to be IDPs. The Guiding Principles don’t say this because they

can’t. To be an IDP is not a legal status. To be a refugee is. ‘Internally displaced person’ is a descriptive term [see article by Kälin, pp. 15]. ‘Displacement’ as a word requires movement. Someone or something cannot be ‘undisplaced’ unless the movement is reversed and the person or object restored to its original location.

The Guiding Principles acknowledge the fundamental gap in human rights law between being internally displaced and being a refugee. In Section Two, the Principles relating to protection from displacement speak of the right not to be “arbitrarily” displaced but recognise that some displacement, such as for large-scale development projects, may be justified by “compelling and overriding public interests” and that “measures shall be taken to minimize displacement and its adverse effects.” One cannot substitute the word ‘refugee’ here. Human rights law finds no justification under any circumstances for making someone a refugee because the threat underlying refugee status is persecution and the lack of protection against being persecuted. IDPs, on the other hand, may be displaced for a variety of reasons not limited to persecution.

If the cause of displacement is not necessarily persecution or even an act prohibited by international law, and if the solution for an IDP is not strictly speaking the restoration or acquisition of protection but simply return to the previous status quo, does an IDP have a right to return? The principal legal architect of the Guiding

Principles on Internal Displacement, Walter Kälin, writes, “there is no general rule in present international law that affirms the right of internally displaced persons to return to their original place of residence or to move to another safe place of their choice within their home country.”¹

So, even though international law does not support a right of IDP return, the descriptive reality cannot cease until such return happens. What, therefore, ought to be the rights-based concern on behalf of internally displaced people?

The rights concern ought not to be because a person is internally displaced *per se* but – by analogy with the underlying concern for refugees – because a person who is internally displaced lacks the protection of their government and, owing to fear of persecution, is unable to access that protection. The rights concern ought to be particularly heightened for IDPs who are prevented from seeking asylum from persecution in another country. The human rights concern ought fundamentally to focus on those IDPs who fear persecution within their country and who lack the protection of – or are threatened by – their own government. Unfortunately, myriad examples of such circumstances exist – Angola, Burma, Chechnya, Colombia, Congo-Kinshasa, Iraq, Liberia, Sudan. The list goes on.

There are, however, millions of other people who are also counted as IDPs because they have been displaced in one manner or another from their places of origin but who have relocated and reintegrated in another part of their country and enjoy the same civil and political rights as their fellow citizens. If we may take the refugee analogy, their situation would be comparable to the refugee who has lost his/her home and possessions and cannot return to reclaim them but who has found protection under another government. Such a refugee has suffered a grievous wrong and

usually continues to suffer hardship as a result of those losses. But, legally, the person is no longer a refugee.

Internal flight alternative and IDPs

Human rights, at least with regard to civil and political rights, tend toward the minimalist, such as the rights not to be tortured and abused. Refugee rights, as conceived by the drafters of the Refugee Convention, are similarly modest. The foundation stone of the Refugee Convention is the principle of *non-refoulement*, the right of a person not to be returned to a place where s/he would be persecuted. 'Place' is not generally interpreted to mean the entirety of a refugee's home country. Thus, asylum jurisprudence in an increasing number of states embraces the notion of an 'internal flight alternative' or 'internal protection' - the notion that refugees can be denied asylum and returned to their country of origin even if they cannot return to their home or habitual place of residence within that country. In effect, refugee law in a growing number of states allows the explicit creation of internally displaced persons. It recognises that a person has a well-founded

fear in one part of his/her country but that the same person could enjoy the protection of his/her government in another part of the country. The key consideration is that the threat of persecution does not exist outside the refugee's original locality and that the person's government is willing and able to protect them.

The internal flight alternative concept is still quite controversial, and this author has been among its fiercest critics,² but it is less controversial when the feared persecutor is a local non-governmental entity opposed by the central government, when the refugee identifies with the majority population and embraces the ideology of the central government, and where the government gives every assurance that it extends the same rights of citizenship and opportunity to the returnee as would be enjoyed by other citizens in the government-controlled part of the country who never left.

Take as an example an ethnic Kurd and an ethnic Turk from southeastern Turkey. Both may have fled Turkey and sought asylum in Germany. For the sake of argument, let us say

that both asylum seekers have successfully established a well-founded fear of persecution in southeastern Turkey. The Turkish Kurd fears persecution at the hands of government forces and government proxies. The ethnic Turk fears persecution at the hands of Kurdish militants. Because of the involvement of the central government, the Kurd can be said not to enjoy an internal flight alternative since his fear of persecution cannot be confined to the southeastern region. For the Turk, on the other hand, relocation and reintegration in central or western Turkey might be a viable option if he does not feel threatened by his government and regards the threat as entirely local; if his government is willing and able to protect him and if the local non-governmental forces that would harm him should he return to the southeast do not have the means of carrying out such a threat beyond that region. However, it is indisputable that when Germany returns the Turkish refugee to Istanbul or Ankara, even though the person at that moment ceases to be a refugee, he, in fact, becomes an IDP.

As already established by the term itself, he remains an IDP until he is

Displaced family in Iraq, 1992.



able to return to his place of origin. However, he does not necessarily remain a human rights concern for the international community. His welfare now becomes the particular concern of his own government.

Conclusion

Millions of IDPs are able to relocate and integrate in other parts of their country. Most commonly, they are at least nominal members of the country's majority ethnic nationality and linguistic group and have fled or been expelled by a secessionist minority living in an ethnic enclave. This has become a particularly common phenomenon in Europe in the 1990s: ethnic Georgians displaced from Abkhazia; ethnic Azeris from Nagorno-Karabakh; ethnic and linguistic Russians from Chechnya; ethnic Serbs from Kosovo. Their suffering is real, their losses devastating, but generally they enjoy the protection of their governments and are able to exercise their rights as citizens. If any of these enclaves were to succeed in their quest for independence, these displaced persons would not qualify for refugee status if they were offered and exercised their rights as citizens in their new locations.

Strictly speaking, they remain IDPs. Yet if the concern for IDPs ultimately rests on their similarity to refugees – the commonly stated notion that IDPs are people who would be refugees if they crossed an international border – then the solutions for refugees must have some bearing on how the international community regards IDPs. Without minimising the anguish or the continuing humanitarian needs of IDPs who enjoy the protection of their government, their plight should not be regarded as equally compelling to that of IDPs who are threatened by their country's government.

Such IDPs are, indeed, especially vulnerable because they remain within the territory of that country. Especially in light of the deference paid to national sovereignty not only by other states but also by international humanitarian agencies of the UN and the ICRC, they should be regarded as at highest risk because they have the least opportunity for protection. For such IDPs the right to seek asylum from persecution outside their country ought to be paramount,

and 'solutions' such as 'safe havens' inside their country or other internal flight alternatives should be looked upon with the utmost scepticism.

Ultimately who is counted as an IDP either rests on the most inclusive meaning of the words 'internally displaced' or has a functional meaning. While reasonable arguments may be made for drawing the line more broadly to include people unable to return to their homes or places of habitual residence or to include people who have not been compensated for their losses, the narrower line based on the lack of protection defines the subset of IDPs who must be of most compelling concern to the rights-regarding international community.

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1. Walter Kälin *Guiding Principles on Internal Displacement: Annotations*, Studies in Transnational Legal Policy, No. 32, published by American Society of International Law and the Brookings Institution Project on Internal Displacement (Washington, DC, 2000) p. 69 (though Kälin does point out that "[a]t least a duty of the competent authorities to allow for the return of internally displaced persons can, however, be based on freedom of movement and the right to choose one's residence.")
2. See Bill Frelick, 'Down the Rabbit Hole: The Strange Logic of Internal Flight Alternative', *World Refugee Survey* 1999. See: <http://refugees.org/>

Clarification

FMR 16 included an article by Pascale Ghazaleh on displaced Sudanese in Cairo. The article stated that "one church offered to help fund the Sacred Heart school but on condition that all the Muslim students were expelled". It has since come to light that no such condition had been imposed. The author had acted in good faith on information received but both she and FMR would like to apologise to the Joint Relief Ministry and its donors for any distress or inconvenience that may have been caused. We wish them well with their excellent work. For more information on JRM, please visit: www.geocities.com/jrmcairo/aboutUs.html

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Returned IDPs, Kelucha village, Taskhinvali area, Georgia.



A UNHCR perspective

by Guillermo Bettocchi with Raquel Freitas

International efforts to uphold the rights of IDPs are bearing fruit at the normative level as well as in attempts to improve the institutional arrangements. So far, however, there are no agreed criteria nor mechanisms to address the question of when displacement ends.

The issue at stake is to identify when international and national responsibilities end in terms of addressing the specific needs of IDPs, as compared to the population in general. What is required is consensus on the part of IDPs, humanitarian actors and the authorities on a strategy for pursuing solutions, monitoring the extent to which IDPs have 're-acquired' effective national protection, and phasing out programmes.

The cessation clause in refugee law can hardly be applied to IDPs by analogy. Internal displacement is a de facto situation and does not confer a legal status, as opposed to the case with refugees. The refugee law analogy would deprive IDPs of their rights as citizens in their own country. Further, the continued applicability of human rights and humanitarian law should be noted, even when there are no longer special needs related to displacement. Legally speaking, there is thus no need to formally declare the end of displacement. In countries such as Afghanistan or Angola, different waves of displacement also make this impractical. Additionally, in many circumstances, IDPs are less vulnerable than others who were unable to move.

Free choices

As national citizens, IDPs are entitled to freedom of movement and residence. Forced displacement constrains the exercise of this freedom. It is only when the causes of forced displacement are removed and conditions for safe and dignified return are created that IDPs are in a position to truly choose where to live. Creating an enabling framework for return will allow IDPs to make informed choices. Here lies the impor-

tance of considering the 'end of displacement' in consultation with the displaced populations themselves. Solutions to their situation have to be voluntary, whether they stay, return or move elsewhere.

Once this is ensured, local settlement at the place of displacement or relocation to other areas will become true options that would end the 'state', not the 'status', of displacement. It is also crucial that options for solutions other than return home are not at the expense of IDPs' other rights as well as the rights of others (i.e. right to property) and that no undue push or pull factors are created.

Sustainable solutions

Ensuring the voluntary nature of the solution is only the first step. In the specific case of refugees, for example, UNHCR has expressed "legitimate concern" for the **consequences** of return,¹ and for the promotion of comprehensive approaches that will ensure the sustainability and durability of return in conditions of safety, dignity and equality with other nationals, taking into account the specific needs of the different affected populations (including IDPs). Sustainable return happens when returnees' physical and material security is assured and when a constructive relationship between returnees, civil society and the state is consolidated. These parameters should apply to all persons affected by displacement (internally and externally) or who otherwise have suffered the consequences of conflict.

Returning refugees are of concern to UNHCR until they are fully (re)integrated into the local community, enjoy a normal livelihood in safety

and dignity and have equal access to protection from the national authorities. There are, however, no fixed indicators to measure 'full reintegration'.

Measuring solutions

Sustainability of solutions should be assessed against agreed benchmarks drawn from applicable principles, including the Guiding Principles on Internal Displacement. Such assessment must involve all categories of persons affected, including returning refugees, IDPs and the local populations. Criteria on when displacement ends (i.e. when a solution has been attained) should be based both on **general** and **specific** considerations regarding the situation of the displaced.

The **general** assessment should contain an analysis of the political context, including peace agreements, democratic elections, reforms to the legal structure, amnesties, general respect for human rights and overall socio-economic conditions. It should assess: the causes of the break-down in national protection; the nature of the conflict and settlement (including their effect on the state's capacity for national protection); and the likely impact of the solution on the process of reconstruction and reconciliation.

Regarding the **specific** assessment, the gradual character of the reversal of the situation makes it difficult to establish strict criteria. The profile of the IDP population should be taken into account, as should the conditions in the areas of return, the prospects of property restitution, job opportunities, physical safety and access to basic living standards. Indicators of 'successful' reintegration are relative and can best be measured by comparing an individual's circumstances with those of neighbours or members of a nearby community.

Specific criteria for determining the end of internal displacement based on the achievement and sustainability of durable solutions must include:

- **Legal (re)integration:** land and property rights, or compensation;

protection against forcible return; non-discrimination and ability to exercise citizenship rights; freedom of movement;

- **Social (re)integration:** right to participate fully and equally in public affairs at all levels and have equal access to public services;
- **Economic (re)integration:** access to employment; self-sufficiency; capacity for achieving viable livelihoods through agricultural production, gainful employment and/or small businesses.

Given the complexity and multi-phased nature of displacement, a comprehensive approach should acknowledge that reintegration is a gradual process often running in tandem with national reconciliation processes and improvements in the economic, social and human rights fields as well as with measures promoting development.

In prolonged conflict situations, the individual's hope to return to his/her area of origin must be balanced with a) the prospects for security that would allow for a safe return and b) the individual's condition in the area where he/she is currently settled.

If conditions for return are not conducive and the individual has an acceptable level of integration in the area of current residence, the latter may be considered a 'durable solution' and a 'phasing-out' strategy thus defined. This will not, though, impede the exercise of the right to return of the individual, whenever s/he assesses that the conditions to do so are conducive.

An essential precondition to enable consolidation of peace, stabilisation, recovery and longer-term development is the removal of the root causes of displacement. Their elimination will, eventually, lead to the application of the cessation clause for refugees, implying that they are no longer in need of international protection. Returning refugees will, nonetheless, still require assistance for their reintegration, together with IDPs. Returning refugees will be of concern to UNHCR until such time that they fully enjoy the protection of their national authorities. Given the volatile nature of internal displacement, though, a separate assessment of the specific needs of the IDPs would be necessary, as they may have different material and non-material requirements.

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1. See Conclusion No 40 of UNHCR's Executive Committee.

2. In the repatriation to Afghanistan, monitoring in the areas of return assesses the situation of the different populations, including returning refugees and IDPs, involuntarily returned persons and the local populations. The aim is an integrated approach to returnee monitoring, addressing protection concerns of returnees and basic initial reintegration needs. Indicators relate to personal security, non-discrimination, recovery of land and other immovable property and the exemption from military services for one year after return.

Communal centre for returnee IDP women and children, renovated by UNHCR, Tbilisi, Georgia.



The legal dimension

by Walter Kälin

The Guiding Principles on Internal Displacement do not explicitly address the question of when displacement ends, i.e. when these principles no longer apply.

Unlike Article 1C of the 1951 Convention on the revocation of refugee status, the Principles do not contain any cessation clauses that would determine when their application ceases.

This is not a gap in the Guiding Principles but a consequence of one of the basic premises upon which they rest; IDPs have many specific protection and assistance needs by nature of their displacement and this is why the Principles spell out in detail their entitlements. However, like other vulnerable groups such as children, or the wounded and the sick, IDPs do not constitute a distinct legal category. Their status of being displaced does not need to be legally recognised in order to get certain legal entitlements.¹ They are already entitled to the human rights and humanitarian law protection that is available to them as to all other citizens in their country and they can invoke without any additional requirement those guarantees that have become particularly relevant to them because of their displacement. In this context, a requirement of 'displaced status determination' analogous to the refugee status determination under the 1951 Convention would be dangerous as it could easily be turned into an instrument of denying rights that they already enjoy. However, if from an international law perspective IDPs do not possess a specific legal status, a cessation of this status similar to Article 1C is unconceivable.

While the lack of a cessation clause in the Guiding Principles is thus justified, the question as to how one should determine when displacement ends remains highly relevant. There are three possible methodological approaches to answering this question.

Cessation in international law

The first approach is to look at how the different areas of international

law upon which the Guiding Principles are based (human rights law, humanitarian law and refugee law by analogy) address the issue of cessation. This approach helps to solve the problem discussed here in a limited way only.

The cessation clauses in Article 1C of the 1951 Convention on the Status of Refugees are of limited relevance for IDPs. First, of all the grounds mentioned in this provision, only paragraph 5 allowing for cessation if "the circumstances in connection with which he has been recognised as a refugee have ceased to exist" could be applied to IDPs by analogy. The other reasons² are intimately linked to the concept of **international** protection for refugees who need that kind of protection because they are abroad. Second, this ground refers to the cessation of a **legal status**, i.e. a concept that is alien to the law on internal displacement. Finally, the Guiding Principles themselves are not limited to displaced persons in the strict sense of the word. They also deal with former IDPs when mentioning the duty of authorities to facilitate the reintegration of returned or resettled persons (Principle 28) and to support them in efforts to regain their property (Principle 29, paragraph 2) or when prohibiting the discrimination of former IDPs (Paragraph 1 of Principle 29).

The idea of 'cessation' is absolutely alien to human rights law. Human rights remain applicable even if someone no longer is an IDP. Thus, for example, the rights to leave the country or to seek asylum (Principle 15) are not lost because someone has given up the idea of return to his or her original place of residence or is fully integrated in the location where he or she found refuge before leaving the country. Likewise, the prohibition of discrimination against returnees or resettlers as a result of their having been displaced (Principle 29) remains applicable even if several decades have elapsed since the end of displacement, provided that the

discriminatory treatment continues. By contrast, humanitarian law guarantees are only applicable during an armed conflict. Regarding the applicability of those principles that are based on the Fourth Geneva Convention, Article 6, for example, is relevant, stating that the application of the present Convention shall cease "on the general close of military operations" and "[i]n the case of occupied territory ... one year after the general close of military operations". The prohibition against using IDPs "to shield military objectives from attack..." in Principle 10(2)(c) has no relevance outside situations of armed conflict even if some remain IDPs after the end of hostilities. It is only regarding those principles that reflect humanitarian law that we can get some guidance from international law on the issue of the duration of application of the Guiding Principles.

Solutions

The second approach - analogous to the discussion of 'solutions' in refugee law and policy - is to look at the factual side of displacement. This is helpful as it allows us to distinguish between the following three situations:

- i) As soon as an IDP leaves his or her country of origin, the Guiding Principles are no longer applicable. Such a person is no longer in the situation of internal displacement but instead becomes a refugee or a migrant as the case may be. Here, displacement ends when the person concerned crosses the frontier of that country.
- ii) Displaced persons are no longer IDPs in the sense of the Guiding Principles if they "have returned to their homes or places of habitual residence" (Principle 29) but they continue to enjoy the rights of returnees as long as they need such protection (Principles 28-30). Once they are (re)integrated, have regained their property or received compensation and are no longer discriminated against because of their former displacement, the Guiding Principles cease to apply.

iii) The same is true of former IDPs who "have resettled in another part of the country" (Principle 29) and are no longer in need of protection under Principles 28-30. Such resettlement, for obvious reasons, must be firm and permanent.

Mandates

A third approach is to look at the mandates of humanitarian agencies and other organisations involved in assisting and protecting IDPs. The mandate of ICRC, for example, may terminate at the end or soon after the end of an armed conflict whereas a development agency may continue to be responsible for very long periods of time for IDPs who cannot return. Other organisations may be mandated to supply housing during displacement and not to returnees. Every organisation will have to determine on the basis of its own mandate when it has to stop to provide assistance and protection.

Conclusions

The factual situation of displacement in most cases changes and ends **gradually** and not abruptly. Similarly, the specific needs of IDPs change gradually

over time. For these reasons, it is not possible, and would be wrong to try, to define cessation clauses analogous to Article 1C of the Refugee Convention that would fix a specific moment when displacement is considered to have ended. Rather, it is appropriate:

- (a) to clearly separate the issue of when the mandate of an organisation requires it to cease providing assistance and protection to IDPs (to be decided specifically by each organisation) from the issue of ending the application of the Guiding Principles (and the hard law underlying it);
- (b) to focus, when deciding about cessation issues, on the needs of IDPs and to provide them with assistance and protection as long as they continue to have specific needs that are or have been caused by their being displaced;
- (c) to combine, regarding the applicability of the Guiding Principles, the second and the first approach, i.e. (i) to ask whether a particular principle still satisfies a continuing need of a person

arising out of the fact that he or she was displaced and (ii) to examine whether, in legal terms, such application is possible because the underlying hard law is protecting the person concerned in his or her present situation; and

- (d) to stress that relevant human rights and humanitarian law guarantees contained in hard law may remain applicable even if the person concerned, due to return or resettlement, no longer has special needs related to the former displacement.

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1. This does not exclude that IDPs are registered for practical purposes.
2. Article 1C paras 1 and 2 (the refugee has regained the protection of his country), para 3 (the refugee has acquired a new nationality), para 4 (the refugee has returned to the country of origin) and para 6 (ability of a stateless person to return to the country of his or her former habitual residence).

National legislation

by Christophe Beau

Few states in the world have a special protection regime for IDPs offering a specific legal status to assist victims of displacement.

Such IDP status, though not required under international law, nonetheless can provide people with social, economic and legal benefits to safeguard rights endangered by displacement.

Six out of eleven European countries affected by conflict and internal displacement have adopted specific laws defining a special status for IDPs: Azerbaijan, Bosnia and Herzegovina, Croatia, Cyprus, Georgia and the Russian Federation. Elsewhere in the world, Colombia is the most notable case.¹

Durable solutions end displacement

Most national laws instituting a status for IDPs provide for the termination of this status after a person has found a solution to their displacement. National legislation most in line with standards set out in the Guiding Principles can be found in Bosnia and Herzegovina, where the law relating to the status of refugees and displaced persons, drafted in cooperation with UNHCR, refers to both return and resettlement as durable solutions ending the status granted to IDPs. The

Bosnian law clearly states that these solutions must correspond to a voluntary choice made by the person concerned, with return and resettlement implemented under conditions of safety and dignity.

Clearly all the details of conditions to be satisfied by the processes of return and resettlement cannot be included in the law but instead could be elaborated in decrees or administrative instructions. However, the law should at least define return and resettlement in a way that makes solutions durable and refers to the essential standards of safety, dignity and freedom of choice. In practice, these solutions tend to be described in very imprecise terms. In Croatia, the law declares return to place of original residence as a sufficient condition for

the cessation of IDP status, reducing the return process to a mere change of address. In Georgia, registration as a permanent resident in a new municipality is seen as de facto resettlement and sufficient grounds to end IDP status. Colombian law stipulates that IDP status ceases with a person's "social-economic consolidation and stabilization" without mentioning safety as a requirement.

National laws may also confer decisive weight on housing as a determining factor. In Azerbaijan and the Russian Federation, resettlement is seen as completed once IDPs can access permanent housing. These national laws rightly highlight housing as an essential element to the safety of displaced persons when searching for durable solutions but risk diverting attention from other vital social, economic, legal and security needs.

Free choice manipulated

Whereas the Guiding Principles highlight the fact that durable solutions should be based on a voluntary decision made by displaced persons, national legislation is often designed to influence this decision. For example, legislation in Azerbaijan provides for resettlement only when return is impossible and after a special decision made by authorities, revealing official preference for the solution of return to original homes. Similarly, in Georgia, the law deters IDPs from resettling permanently elsewhere in the country, withdrawing their special status and the meagre social rights attached to it as soon as they register as permanent residents in a municipality outside their area of origin.

Although Guiding Principle 28 specifies that the authorities' responsibility is to create conditions for both return and resettlement, emphasis in some national legislation on one solution above others may be legitimate if it helps to restore real freedom of choice. In Bosnia and Herzegovina, the law specifies as an aim the creation of



UNHCR/A Hollmann

conditions conducive to return (omitting resettlement), in order to counter local opposition to minority returns. There is a very fine line, however, between creating conditions for restoring real freedom of choice and manipulating IDPs' intentions.

The political exploitation of IDPs' will to return is most obvious in countries facing challenges to their sovereignty from occupation or secession. By artificially prolonging IDP status in order to keep the displacement problem as visible as possible, countries like Georgia and Azerbaijan promote their claims over the occupied territories. By deterring displaced persons from opting for any solution other than return, as long as sovereignty has not been restored in the lost territory, these states maintain IDPs in precarious social conditions, discouraged from rebuilding a new life outside their areas of origin.

Also demonstrating the reluctance of the government to consider the displacement crisis ended while the country is still divided, Cypriot law makes no provision to end the special status granted to persons displaced from the Turkish-controlled part of island. On the contrary, the law extends IDP status to children of male displaced persons, thereby artificially conferring the IDP status to persons who have not necessarily experienced displacement themselves or have already resettled durably in the government-held area. However, unlike

Georgia and Azerbaijan, the Cypriot state has spared no efforts in helping the displaced persons to reconstruct a new life away from their homes, in particular through an extensive housing policy.

Displacement ended arbitrarily?

Various examples of national legislation end IDP status based on a presumption that people have found a solution or that special assistance is no longer needed. In some cases, IDP status and assistance can be terminated after a specified period of time. In Bosnia and Herzegovina, 'returnee' status is limited to a period of six months. In the Russian Federation, 'forced migrant' status ends after five years but can be extended if a permanent place of residence has not been found. Legislation in Bosnia and Herzegovina, Colombia and Croatia can also end IDP status if a person refuses state assistance or a specific solution offered. Here the state presumes the displaced person has already found a response to their needs or has opted for another solution. In Croatian and Georgian laws, the end of displacement is also presumed when the circumstances that caused displacement have ceased or when state authorities declare this to be the case.

Presumption-based criteria for ending IDP status bypass the express will of

IDPs in Bilasovar 5 camp, Aghjabedi District, Azerbaijan

the displaced as they assume that all conditions for a free choice are fulfilled and that the IDPs are seeking to extend their status beyond what is necessary. Such provisions open the door to many abuses, allowing a state to prematurely discharge itself from responsibilities before the process of return or resettlement is complete. Another risk is that authorities declare the end of displacement on a discriminatory basis, with no guarantee that assessment of conditions in the areas of return or resettlement will be done fairly. Bosnian law provides clear guidance as to limitations of presumption in specific cases; persons who experienced serious trauma in their areas of origin should not be presumed to have found a solution if they decide not to return, even when adequate conditions of safety and dignity exist in the area of origin.

Some states have discriminatory provisions to end displacement, in overt contradiction to the Guiding Principles. In Croatia, IDP status can be ended if a displaced person fails to fulfill 'household tasks' in state-allocated shelters. Such provisions create a special regime of sanctions for IDPs, in violation of Guiding Principle 1 on non-discrimination. In a decision released on 21 November 2002, the Constitutional Court of the Russian Federation annulled a provision of the 1995 'forced migrant' law, according to which forced migrant status could be ended following conviction for a "serious" crime. The Court argued that the withdrawal of forced migrant status was an addition-

tional punishment for the same crime, thereby infringing the right of forced migrants to equality before law. The Court also noted that such withdrawal was not provided for in criminal law.

The Guiding Principles define IDPs as permanent residents who have not crossed an internationally recognised border. IDP status can therefore be withdrawn if the displaced person leaves the country and becomes permanently resident in another country. This provision can be found in the Georgian legislation and in the 'forced migrant' law of the Russian Federation. However, Georgian legislation, which restricts the benefits of IDP status to Georgian nationals and stateless persons, ends national IDP status when the displaced person acquires the citizenship of another country, even if this person does not leave the Georgian territory.

Good practice

In the author's view, IDP status should end when people no longer need special attention as a result of displacement. The end of displacement should be defined in national law to coincide with durable solutions as defined in the UN Guiding Principles on Internal Displacement - voluntary return, local integration or resettlement elsewhere in the country. Such solutions should always be **voluntary**, and carried out in conditions of **safety and dignity**.

Some states do recognise the problems with ending IDP status prematurely. The constitutional court of Colombia, in its decision of 16 March 2001, highlighted that in some cases the real 'situation'

of a displaced person on the ground may not correspond to their legal 'condition', especially if their IDP status is arbitrarily terminated. With the Guiding Principles, states now have an instrument to guide legal practice on ending displacement based on durable solutions and internationally recognised standards.

The Guiding Principles do not provide detailed or definitive answers to when the state can legitimately end its assistance to IDPs. The Principles, however, do allow an assessment of whether state policy to end IDP status infringes key principles of protection, such as non-discrimination, safety and freedom of choice. One way to ensure consideration of the Principles is for legislators to make specific references to them when preparing national laws to end displacement.

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1. Legislation, and references, can be obtained from the Global IDP Project: www.idpproject.org/

Law on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina, Official Gazette, 23 December 1999

Article 7

The status of a displaced person shall cease if a person:

- a) voluntarily returns to his/her former habitual residence;
- b) refuses to return to his/her former habitual residence, although voluntary return to the place of his/her former habitual residence, in safety and with dignity, is possible, and if there are no compelling reasons arising out of previous persecution or other strong humanitarian reasons;
- c) takes up, in safety and dignity, permanent residence elsewhere in the place of his/her voluntary choice;
- d) and if there are other reasons regulated by Entity laws.

[Unofficial translation]

IDP in Baku,
Azerbaijan



Looking beyond emergency response

by Patricia Weiss Fagen

International concerns and practical attention (including those outlined in the Guiding Principles on Internal Displacement) have been weighted on the side of emergency responses to displacement. No matter how effective they are, however, emergency responses are not solutions.

Rather, emergency support creates the conditions for survival and security on which more durable solutions may or may not be built. This article considers the longer-term options for war-uprooted and war-affected populations and the challenges of reintegration efforts through which they can be restored to productive citizenship.

Attempts to bring developmental elements to populations still in need of relief remain small-scale, time-limited and experimental. Therefore, to some extent, international agencies are still 'learning on the job' about the requirements, contradictions and commitments needed to address persistent migration crises and war-to-peace transitions generally. It is troubling, however, that even when the donors and international agencies know what needs to be done, they so often lack the political will to act in accordance with their own oft-repeated recommendations.

Finding a place

The majority of people who have been displaced are all but invisible because they are not found in camps and settlements. In addition to the millions of IDPs living in demarcated locations, there are other millions – impossible to count – who have found their way to villages, towns, the homes of families and friends and, especially, large cities. Although they may receive sporadic outside assistance, their numbers and conditions are little known, much less monitored. These are the people who really fall through the cracks.

Anyone who has been to a typical IDP settlement or camp has probably seen

conditions far worse than what would be observed in a typical refugee camp. People need to be helped urgently to leave such places as soon as it is safe to do so. If 'going home' is not possible, either integration *sur place* or alternative resettlement in a safe area is needed. It appears, however, that achieving durable solutions for IDPs is not a high priority either for the respective governments or for international agencies.

The lack of meaningful action derives, in part, from the perception that conflict-induced displacements are temporary phenomena that will be solved by establishing conditions for people to go home. It is due, in larger part, to the fact that to seek stable and productive integration or relocation elsewhere than 'home' is to acknowledge an undesirable political *fait accompli*. In other words, humanitarian relief for long-term IDPs is more easily accepted than are durable solutions, because actions in the latter direction can carry an unwanted political message – from governments, donor agencies and the IDPs themselves – that significant and possibly even permanent changes have occurred in areas of origin, making return in the foreseeable future seem highly unlikely.

Re-establishing productive lives

In the most gratifying situations, crises and conflict are brought to a close and people return to their former homes to take up their former livelihoods. This marks the end of formal displacement but only the beginning of the solution. Depending on what has happened in the interim

period, they may find homes and communities destroyed or inhabited by other residents; they may have lost personal documentation necessary to establish their identity, rights and property ownership. Young people are likely to have lost years of education; families are likely to have suffered losses and to have to cope with ill-health, trauma or disabilities. The direct effects of their displacement persist until there are mechanisms in place and resources to address such issues. Ultimately, the viability of returning home depends on rebuilding the local economies in war-torn regions.

The less straightforward situations are those in which the people who have been displaced find it necessary or desirable to remake their lives elsewhere than their places of origin, either because conflict continues or for other reasons.¹ IDPs of rural origin who have lost their own land (or access to land) do best if they are able to settle in similar rural areas where ethnic affinities facilitate local incorporation of displaced families. A review of cases turns up few examples in which large groups displaced from one rural area have successfully resettled in another. Despite resourcefulness and sometimes astonishing survival strategies, rural relocation has rarely proved to be durable. Reports indicate that even where conflict does not disrupt local livelihoods, the arrival of large numbers of displaced combined with generalised poverty in the receiving areas overwhelm absorption possibilities and eventually exacerbate tensions between newcomers and local population over land and resources (e.g. Angola, Sri Lanka, Uganda, Guatemala).

Governments sometimes make public lands available for IDP settlement, proclaiming this to be a durable solution. However, in the examples that come to mind (Sri Lanka, Colombia, Indonesia, North India), the government-owned land comes without the

resources needed to make settlements economically viable, i.e. agricultural inputs, credits and markets. Thus, more often, the rural displaced are obliged to live in camp-like settlements with few opportunities for income generation and are partially or wholly dependent on external assistance.

Sri Lanka illustrates the problems of finding durable solutions for a displaced rural population. A study on displacement in that country undertaken in late 2000 and mid-2001 concluded: "After almost twenty years of conflict and internal displacement, there is a lack of integrated, systematic and systemic analysis, planning and policy on the long-term implications of internal displacement and humanitarian intervention in the conflict zones."² Many of the IDPs interviewed had been living in rural welfare and relocation centres for a decade or more. At best, they had managed to replace flimsy shelters with more solid ones, to find casual employment in urban centres or to have temporary access to small plots of land. In Sri Lanka, fortunately, the promising direction of the peace process now seems likely to bring positive change. It will be extremely important to support post-conflict IDP reintegration if peace is to be maintained.

Sooner or later, most war-induced displaced, along with other forced migrants, flock to cities where they hope to find work or receive help from family members. Urban growth throughout the developing world has far outstripped the ability of poor governments to provide adequate services or to control crime. Cities expand at accelerated rates during periods of conflict.

The predominantly rural IDPs are likely to be among the most vulnerable and least protected of urban dwellers. They are often considered as temporary residents who will leave when peace is restored – or their arrival is barely noticed because it seems simply to be an acceleration of normal rural-urban migration patterns. Newly-arrived IDPs are likely to receive attention – often hostile – only when they are seen to negatively affect services and safety for other city

dwellers. Urban improvements that may be put in place rarely take into account the particularly dire situations faced by those whose presence is the result of forced migration and flight rather than choice. Programmes on behalf of displaced persons in urban areas, it appears, are uniformly weak.

In Colombia at least 50% of its IDPs end up in major cities, usually after a progression of moves further from their places of origin. They may register for government-provided emergency assistance soon after displacement. Assistance is made available for a three-month period but only once – no matter how many times they are, in fact, obliged to move. Following the three months, IDPs are considered to have moved to a 'stabilisation phase'. The state, which has proved unable to provide the protection needed to prevent displacement in the first place, has proved equally unable to provide security for urban and semi-urban IDP settlements, even those outside of conflict areas. The state bureaucracy has largely failed to provide the education and health care to which IDPs are entitled. A minority of IDPs presently benefits from international programmes of various kinds and these too receive only short-term funding. In the new UN Humanitarian Action Plan for Colombia 2003,³ international agencies in Colombia have prioritised longer-term reintegration and institutional strengthening.

The goal of reintegration

The twin assumptions that IDPs can and will return to their places of origin and that advocacy should be focused solely on this solution not only are misleading but also have reinforced the tendency to bypass opportunities for supporting integration. This observation is not meant to underestimate the importance of advocating the right to return and the need to support return movements. Rather, it is intended to advocate support for multiple solutions, in both rural and urban settings, designed to absorb and integrate IDPs in the places where they are and/or to help them to find alternative places to live and work. Even if they may eventually



UNHCR/SP Smith

return to their places of origin, their lives in the interim should not remain in limbo, in an unhappy holding pattern with few if any options.

It is possible to reach the long-term displaced through programmes and projects that seek to improve conditions and foster integration in places where war-affected populations abound. Supporting local integration includes measures to provide war-uprooted people with access to schools and to national health care mechanisms, jobs and titles to their property, including the temporary makeshift homes and the bits of land they have acquired where they are living. International assistance is essential and could be far more effectively channelled than is now the case.

How international assistance is channelled will strongly influence whether or not there are durable solutions for IDPs and other war-affected populations. The state has the primary responsibility for resolving displacement and for re-integrating the displaced but it does not necessarily have the wherewithal, capacity or will to do so. So long as assistance to IDPs and other vulnerable groups is limited to direct emergency relief and

administered by international agencies, local governments will continue to look to international humanitarian action and funding for this purpose. National governments are more likely to make reintegration a national priority if the international community supports the process materially and through capacity building and institution strengthening in areas producing and receiving displaced persons.

International support for ending displacement should aim at strengthening the capabilities and the will of local and national government structures to work with IDPs to find solutions to their problems. It is essential to develop working relations

between international assistance and development agencies and national and/or local structures and actors at the earliest possible stage. There are situations in which this is neither possible nor desirable when governments have harmful, even murderous, intentions towards IDPs and divert humanitarian assistance for military purposes. Nevertheless, early efforts to overcome local distrust and hostility toward the displaced and, where necessary, to start work in non-government areas can bring positive results over time. Under the best circumstances, rebuilding war-torn societies and integrating war-affected populations are long and complicated processes. Despite the inevitable

tensions and diverging agendas among the actors involved, however, international support remains critical to rebuilding the social and economic fabric so that former IDPs will have a place within national society.

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1. The examples here do not include discussion of forced displacement such as the government-induced regroupment centres in Burundi.
2. 'Sri Lanka Case Study Project', Part 111, unpublished manuscript, MacArthur sponsored project on Forced Migration and the Humanitarian Regime. 2001.
3. UN Humanitarian Action Plan, 2002-2003, 27 November 2002. See www.reliefweb.in (go to Colombia and download 14.2.03 doc).

The role of protection in ending displacement

by Roberta Cohen

Violence erupted in Tajikistan in 1993 when tens of thousands of IDPs and refugees began returning to their homes. In many villages, newly returned people found their homes occupied by others or they became victim of physical assaults incited by ethnic animosity. Scores of murders and disappearances were reported. The signing of a cease-fire agreement in 1994 did not by itself create an environment safe for return. There was need for the international community and the local authorities to step in to make the returns secure and viable.

Much to its credit, UNHCR developed a human rights monitoring programme designed to take account of the fact that, in Tajikistan's volatile climate, simply transporting people back to their homes and distributing roofing materials to them would not be enough to create a secure environment and prevent further displacement. UNHCR deployed field staff in return areas to monitor conditions and intercede with the authorities when there were human rights abuses or risks to personal safety. UNHCR field officers investigated complaints of murder, disappearances, rape and harassment since many of the returnees distrusted the local authorities and often first reported such crimes to the

UNHCR office. They then accompanied the victims to local governmental offices to ensure that a full and fair hearing was provided. UNHCR staff also interceded with the authorities to help returnees reclaim their homes. Local authorities proved receptive to UNHCR's role and there were no incidents of retaliation against their staff. According to an evaluation, UNHCR's "24-hour presence" in areas of return and its "impartial" role exercised "a stabilizing influence": new outbreaks of communal violence were discouraged and the number of protection cases declined.¹ IDPs and refugees felt more assured about returning home and more confident to remain once they had moved back.

What happened in Tajikistan from 1993 to 1996 is instructive in considering the question of when displacement ends. It demonstrates that even in countries where conflicts are formally over, continuing animosities among individuals or groups may jeopardise return processes and impede an end to displacement. Indeed, societal tensions may heighten in the post-conflict phase, especially if the displaced return to find their homes, land and personal property taken by others and no functioning judicial system in place to resolve disputes. Moreover, in coun-

tries where severe abuses of human rights and humanitarian law have been perpetrated, there may be unsettled scores in villages and towns throughout the country, and targeting of persons who return.

The Tajikistan experience also shows that safe and successful returns are more likely when specific protection and human rights duties are assigned to field staff deployed in the different return areas who possess the requisite skills. UNHCR officers were fluent in Farsi or Russian and had extensive experience in the former Soviet Union. Some had a legal background, which brought authority to their interactions with local officials, law enforcement officers and the courts. Others had negotiating skills, which contributed to relieving tensions and reducing the threat of violence against returnees. The UNHCR team also developed a good working relationship with the UN military observer mission in Tajikistan (UNMOT). Finally, the team did not just depart at the end of its mission; it arranged for the Organisation for Security and Cooperation in Europe (OSCE) to assume its human rights monitoring role, thereby maintaining continuity of protection for the population.

Such efforts, of course, are not always equally successful. In Rwanda, for example, in 1994-1995, 130 human rights staff were deployed by the Office of the High Commissioner for Human Rights (OHCHR) to bring a modicum of safety to returning Hutu and Tutsi following the genocide. But many were inexperienced and had not been given adequate training, and there were long delays in sending them from the capital to the areas of return. The High Commissioner himself described the operation as a "logistical failure". Nonetheless, OHCHR was able largely to turn it around. An experienced staff member was put in charge, human rights staff were deployed around the country and effective partnerships were developed with UNHCR and the UN's military mission in Rwanda (UNAMIR). In the end, the Human Rights Field Operation in Rwanda was able more effectively to monitor conditions in areas of return, advocate for the displaced with the local authorities, and contribute overall to the security of return areas.

Recurrent displacement

In Afghanistan today, the failure of the international community to create a secure environment and provide protection to returnees has caused the return process to founder. Far from ending, displacement has been recurring throughout the country. Large numbers of Afghan refugees returning from long exile abroad are now becoming internally displaced and others are making their way back to Pakistan. Afghans already internally displaced are becoming uprooted a second or third time. About 40% of the two million people who have thus far returned to Afghanistan have crowded into Kabul, Herat and other cities because they cannot find sufficient security or work in their home areas. In the case of the ethnic Pashtuns, tens of thousands have refrained from returning to the north because they fear localised fighting among rival militias or retribution from Uzbek and other ethnic groups because of their association or perceived association with the ousted Taliban regime.²

Although UNHCR has helped establish a commission involving the central government and local authorities to look at claims of harassment and land confiscation in the north, aid workers

have found it hard to assist people returning to their villages and towns in different parts of the country. Between January and August 2002, the UN documented more than 70 'incidents' of violence against aid agencies and workers, including cases of rape, looting and firing on UN vehicles.³

Contributing to the violence is the fact that the UN-authorized International Security Assistance Force (ISAF) has been deployed only in the capital. The US has opposed its expansion, with the result that ISAF is limited to 4,500 troops and has a mandate to protect only the government. Towards the end of 2002 the US instructed its special forces and civil affairs specialists to shift from exclusive counter terrorism operations to working with newly trained Afghan troops to defuse local conflicts, mitigate inter-factional fighting and help with the building of roads, schools and other development projects. Nonetheless, warlords and militias continue to run large parts of the country.

Further impeding returns is the inordinately slow international response in removing landmines and other unexploded ordinance, which cover more than 700 square kilometres of Afghanistan. The infestation of landmines is hardly unique to Afghanistan. In Mozambique, mines killed more than 10,000 displaced persons over the course of the return and resettlement programme.⁴ In Angola, mines impede the delivery of humanitarian aid to returnees and delay agricultural programmes needed to make their returns more viable. In 2001, 75% of the 660 killed in Angola by exploding mines and other ordinance were internally displaced persons.⁵ Mine clearance programmes are expensive but they are essential to enhancing security in areas of return. Mine-awareness campaigns are also important to warn returnees about where mines might be planted and how to avoid them. At the same time, a new study has found that current mine detecting equipment is largely unreliable. If attention is not paid to developing new equipment, the study points out, it could take nearly half a century to clear all the landmines lying in wait around the world.⁶

International response

While many factors will determine whether and when displacement ends,

the greater involvement of human rights and humanitarian field staff in the return process is one way of increasing attention to protection and achieving safe returns. Overall, however, there are no predictable international arrangements. In Sri Lanka, UNHCR is currently working with the government to identify the problems that need to be addressed for the safe return of hundreds of thousands of IDPs and refugees. These include property restitution or compensation, establishing non-discriminatory legal, administrative and police systems in areas of return, issuing identity documents, accelerating clearance of landmines and undertaking special efforts to enhance protection for women and children, who remain vulnerable to abuse upon return.

In Angola, however, which has more than 4 million IDPs, responsibility for the protection of returnees is on less firm ground. Initially, UNHCR developed a promising two-year plan, inclusive of mobile protection teams and NGO protection networks, but donor governments refused to fund it on the grounds that UNHCR should stick to refugees and that other agencies on the ground should be capable of undertaking these activities.⁷

UNHCR as a result has been helping only those returning IDPs who happen to be intermingled with refugees. But no other agency has the capacity to fulfill the protection responsibility for returning IDPs. The human rights division of the UN Mission in Angola, which also reports to OHCHR, has presence only in the capital and three provinces and largely focuses on capacity building for the government. The Office for the Coordination of Humanitarian Affairs (OCHA), although a coordinating rather than an operational body, has sought to monitor conditions in all 18 provinces and to promote provincial protection committees. But its field staff is limited in number, must concentrate mainly on coordination and has little experience in human rights and protection work. Meanwhile, Refugees International reports that IDPs finding little security or sustainability in home villages or areas of resettlement have begun to leave these areas in search of better conditions elsewhere.⁸ When it comes to protection, there are few organisations to turn to in post-conflict situations. The International

Committee of the Red Cross (ICRC), the premier protection agency, is expected to exit after the conflict, in accordance with its mandate. Post-conflict reprisals, retribution killings and other violence do not generally fall under the Geneva Conventions. UNHCR, because of budgetary shortfalls and a recently more restrictive interpretation of its mandate, has become less engaged on behalf of IDPs, and there is now great uncertainty about whether or not it will become involved in protecting IDPs in return programmes. OHCHR for its part has largely avoided field operations involving direct protection of IDPs since it mounted the large-scale operation in Rwanda in the mid 1990s. The office continues to suffer from severe resource limitations and deliberate political attempts by UN member states to limit its role.

Basically, this leaves OCHA to try to bring together whatever players happen to be on the ground to share the protection responsibility. Its new IDP Unit has been energetically promoting 'protection coalitions'. While it can encourage additional agencies to become involved or deploy its own IDP adviser, at times the result is an *ad hoc* mix of organisations that includes some without any human rights or protection experience.

One way to address this gap would be for ICRC and donor governments supporting its work to consider whether ICRC might assume a protection role for IDPs and other civilians during the phase of return and reintegration. Another would be to secure more of a commitment from UNHCR and from OHCHR whose new Human Rights Commissioner, Sergio Vieira de Mello, should be encouraged to have his office assume greater field engagement in return processes.

Partnerships with NGOs should be actively promoted. Peace Brigades International, for example, has directly accompanied displaced persons back to their towns and villages in strife-torn Colombia. And in the Russian Federation, local NGOs have stationed staff in IDP camps in Ingushetia to try to deter forced returns to Chechnya. Moreover, the Geneva-based Henri Dunant Centre took the initiative to organise a team of 'peace monitors' in Aceh, Indonesia, to escort more than 2,500

displaced people back to their homes following talks between the government and the Free Aceh Movement. Regional organisations can also be effective partners. In Tajikistan, it was the OSCE that took over from UNHCR in monitoring the safety and human rights of returning IDPs. And in Bosnia, OSCE dispatched several hundred staff members to monitor human rights conditions under the Dayton accords, including freedom of movement and the right of displaced persons to repossess their property or receive compensation. The chief difficulty is that, at present, in each new humanitarian and human rights emergency no one knows which agency or combination thereof will become involved in promoting safety



during returns of the internally displaced. Georgetown University's Institute for the Study of International Migration has floated the idea of establishing a High Commissioner for Forced Migrants as a way of plugging the gaps in the international system. Others have proposed that a standby corps of protection specialists be created, both for emergencies and their aftermath, drawn from police and constabulary units, humanitarian and human rights organisations and security experts, to provide technical advice to those on the ground and also deploy staff to carry out protection responsibilities.

Conclusion

Ending displacement will clearly require greater international commitment to integrating human rights and protection concerns into return processes and to making sure that organisations on the ground have the expertise, training and resources to carry out such activities. It will also require a commitment to providing longer-term support for the restoration of civil society, electoral systems, judicial institutions that can resolve property and land disputes, and due process procedures to safeguard human rights. Most welcome in this regard is the increased recognition being given to the view that post-conflict reconstruction must include not only the rebuilding of physical infrastructure but the restoration of a framework of governance inclusive of democratisation, social justice and respect for human rights. Yet protection and human rights concerns are still often secondary concerns and their implementation largely *ad hoc*. In some instances, organisational turf wars and parochial views of 'mandates' contribute to the uncertainty; so too does the international community's reflexive desire to 'play it safe' by limiting its activities to providing food, medicine and shelter. Only when it is realised that promoting the physical safety and human rights of people upon their return home is equally important will it be possible to say that a solution to the problem of ending displacement has truly been found.

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Drought-affected IDPs in Maslakh, Afghanistan, receiving food aid, 2002.

The question not asked: when does displacement end?

by Michael M Cernea

"A drop reflects the ocean", the old saying goes. This simple question – "When does displacement end?" – similarly reflects an ocean: the ocean of displacement issues. This question sounds simple but it isn't.

In fact, it probes the depth and length of the entire involuntary displacement-resettlement continuum.

Population displacements differ by cause, content, the way they unfold and the way they end.

Answers about 'end' must vary depending on the initial cause of involuntary displacement – which may be war, a natural calamity or a necessary development project. This article refers to the end of one type of displacements – those caused by public sector projects that install new infrastructure, build plants, construct highways or accomplish other needed developments.

Because such displacements are deliberate and planned in advance, their 'end' would logically have to be defined also in advance, and under the same plan. Paradoxically, however, these plans define only the start of displacement but not its time-bound end. Why this inconsistency?

Resettlement Action Plans (RAPs) are important instruments and contain many provisions indispensable for protecting those displaced. Instituting RAPs as mandatory safeguarding tools in development projects marked a major progress compared to the unregulated approaches of the pre-1980 period. Surprisingly, however, despite the great detail prescribed for designing such RAPs, they indicate only a time-bound beginning but not a time-bound end to displacement. In short, the question about the time-bound completion of the state of displacement is **not** asked. And an answer is not given. Yet this is a fundamental question. It must be asked. It must also be included in planning. And it must be answered.

However, before asking about the end, there is also another tricky question

that needs clarification: when does displacement **begin**?

It is commonly assumed that displacement 'begins' when people are forced to physically leave their habitat. This is correct only in the case of displacement by natural disaster or by war, when the onset of population displacement is sudden and people must flee immediately. However, in displacements caused by development projects, the **'displacement' often begins long before the actual physical removal** of people, as the onset of the economic effects of expropriation very often precedes physical relocation.

Indeed, in projects that expropriate large areas for 'right-of-way' – such as dams and reservoirs, highways, strip mining, etc – the decision about the forthcoming land take is made long before actual population removal. The legal principle of 'eminent domain' is applied and the new category of development-displaced people is created as a legal category, the result of implementing the expropriation decision. This decision leads to legal public notification of area boundaries and entails a 'cut-off' date and legal prohibition of new constructions and of new investments in the condemned areas, to avoid increases in compensation costs. This in turn induces depression – causing drops in land prices, halt in housing and enterprise construction, freezing of public investments for public services expansion, etc. The 'to-be-displaced' inhabitants begin to suffer adverse economic consequences long before being physically displaced. This period of pre-project 'condemnation' may last many years, until the project

actually starts. These are years when the ugly manifestation of **relative** impoverishment begins.

This is why recognising the real 'beginning' of development-induced displacement is no less valid than asking about its 'end'. In light of empirical observations and social analysis, the conventional wisdom about the 'beginning' of displacement must be amended. The displacement clock starts earlier than is commonly assumed.

Criteria for defining the end of displacement: policy objectives

Let us return now to the initial question and examine our finding that Resettlement Action Plans generally tend to avoid this explicit question and its answer. RAPs fail to explicitly 'plan' a target end-date of displacement, although projects have to plan for all their other components. Information available for RAPs is plenty – on project conditions, area characteristics, inputs, options, projected outcomes, etc. RAPs are in a position to set a time-bound benchmark as a goal, within the project period or slightly after it, but this does not happen in the current format of RAPs. Let us therefore examine two elements: the **criteria** for defining the end of the state of displacement and the **measurements** to ascertain that criteria are met.

Consensus is growing among IDP researchers about the need for specific criteria on determining when displacement ends for various IDP groups. The criteria would clearly differ by the cause, content and type of displacement for different sub-categories of IDPs. For refugees, explicit 'cessation criteria' determining when their state as refugee comes to an end have been already long defined, as early as in the 1951 Refugee Convention. In the case of some IDP sub-categories (resulting from conflicts, for instance) the problems are complex and under review,

with different view points expressed, but for the category of development-displaced people the criteria may be easier to outline.

I advance for discussion two propositions about how we could define the end of displacement for the large sub-category of development-displaced populations:

First, the criterion for determining the end of displacement must derive from the policy that defines the objective of development-induced involuntary resettlement. If displacement results from deliberate policy, and is legally induced, displacement's **end** must be equally policy-induced and determined.

Second, in light of this criterion, displacement would end when the policy objective is reached - namely, when the displaced people achieve a livelihood level improved over their pre-displacement levels or (as a controversial minimal caveat still allows under some current policies) when they are restored at a level equal to their pre-project level (plus 'without-project' growth). Current resettlement policies of major development aid agencies, bilateral and multilateral, clearly define the basic objective of their involuntary resettlement policies as "improving, or at least restoring" livelihoods.

These two propositions, as answer to the legitimate question about 'when does displacement end?', imply also an intimate link between criteria and

measurements. Criteria which are not measurable would be useless. Conversely, if measurements are not undertaken, theoretical criteria alone would be of little use.

Practice versus policy

What does current practice tell us? Time-wise, the displacement-resettlement continuum unfolds through three essential phases: 1) expropriation/displacement; 2) transfer process from old location to new site; and 3) resettlement and reconstruction of livelihood. The process initiated with the identification of land for expropriation and the physical displacement does not end at phase two. It truly ends only when the third phase - resettlement-reconstruction as per the policy requirement - is completed. This explains why confusing the end of displacement with the end of the physical transfer phase is a grievous mistake. Unfortunately, many government officials, planners and project managers are still making this confusion.

As a result, many people are displaced and relocated but remain not rehabilitated for years: for them, displacement has not ended. While in theory the first two phases of the continuum must be followed immediately by the third phase, in practice this very often does **not** happen, and those displaced do not advance through the third phase. Those affected are not sustainably reestablished, displacement is not ended, and they

remain displaced and impoverished, left chronically behind those unaffected by the project.

As long as RAPs avoid setting a benchmark end-date (even a flexible one), there is no 'planned' milestone in a given project against which to measure performance and institute accountability. Leaving the end of displacement open-ended rather than planned in a time-bound fashion leaves those displaced in limbo and undercuts the safeguards principle.

One of the most telling statistics in this respect was provided by Indian researchers, who concluded that out of about 20 million people displaced in India over a 40 year period, 75%, that is 15 million, were relocated but not rehabilitated, emerging from the transfer phase worse off than they were before the projects and displacement started.¹

Necessary remedies

What would be the practical and operational implications of defining displacement's end correctly, in light of basic policy objectives?

Empirical findings from research carried out by many anthropologists, geographers and sociologists led me to the formulation of the Impoverishment Risks and Reconstruction (IRR) model, which posits that overcoming the risks of decapitalising resettlers and impoverishing them is the core task in resettlement.² The basic poverty risks identified in the IRR model are: landlessness, joblessness, homelessness, marginalisation, food insecurity, increased morbidity, education loss, loss of access to common property resources and social disarticulation. If displacement is wrongly defined as ending with physical transfer, **before** reconstruction begins, those displaced are abandoned to fight on their own the risks imposed on them. Compensation for expropriated assets is not the full solution by far and has long been proven to be an insufficient remedy against impoverishment. To avoid such situations, I suggest three points.

First, a correct definition of what is the 'end' of development-induced displacement would need to be included in every project's RAP as an objective consistent with policy.

Evictees, Sardar Sarovar Dam, Narmada River, India



Second, the very content of the RAP should be tailored towards achieving this end, in a measurable way and with **time-bound accountability for each project**. This, again, is usually not happening now, perhaps with the exception of some internationally assisted projects subject to monitored safeguard policies. Pressure to reach the **policy-defined end** will force improvements in the entire preceding resettlement work. Projects guided by safeguard policies have indeed made great progress towards transparently accounting for the number of people to be displaced, mitigating many adverse impacts. But many such projects do not transparently account for how many of these displaced people end their displacement with their livelihoods improved by the project's end, and how many do not. To the credit of some agencies, a demand for some assessments was incorporated in the OECD and World Bank guidelines on involuntary resettlement. Yet, these assessments are not explicitly linked to reaching 'closure' and an end of displacement.

To achieve clear awareness of results, RAPs would have to schedule and carry out a sample survey study as part of the project completion report to determine a) whether, and how many, of those displaced have ended their displacement **in substantive terms**, recovering and improving their livelihoods and b) how many have not ended it during the project's limited duration and therefore must be still seen as needing assistance. Without such a study the safeguarding discourse cannot really conclude whether projects have succeeded in achieving the basic objective of the resettlement policy or whether these projects leave the process unfinished.

The recently revised World Bank policy on resettlement states that "upon completion of the project, the borrower undertakes an assessment to determine whether the objectives of the resettlement instrument have been achieved".³ This positive proposition is a step in the right direction, yet it is more descriptive than prescriptive and is rarely carried out. The OECD guidelines prescribe that "all resettlement plans... should include a target date when the anticipated benefits to resettlers and hosts are expected to be achieved".⁴ But unfortunately it is widely known that key bilateral aid agencies of OECD

countries only weakly, if at all, implement their resettlement guidelines, and the correct concept of a 'target-date' is forgotten and absent.

My third and last point responds to the possibility that such a survey would find that many of those displaced have not 'ended' their displacement. Resettlers must be provided with resources and opportunities to share in the project's benefits and truly recover. Project agencies should design follow-up measures to pursue assistance until the policy goal is accomplished. There are numerous operational ways in which this can be done measurably. Otherwise, exposing people to added risks and discontinuing reconstruction assistance before their economic displacement ends would only mean swelling the ranks of the poor with newly impoverished people.

I started this article by saying that this simple question - when does displacement end? - reflects the vast ocean of displacement problems. Indeed, it led us to examine in turn the beginning of displacement, its risks, the phases of the process, its impoverishment effects, the policy that would counteract the risks, criteria and measurements - all this in order to understand what its end is and ought to be. Thus, it is a difficult but very worthwhile question. The question about 'end' precipitates clarity. This key question must be asked in every single instance of displacement, in every RAP. And - most importantly - the question is not a riddle: it does have a clear answer. Current practice must be improved to accomplish the policy-required and defined answer.



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Burundi: out of sight, out of mind?

by Susan Martin

Since the early 1970s, conflict in Burundi has caused more than 200,000 Burundians to lose their lives, many to flee abroad and many more to be displaced, some temporarily and some more long term.

There are approximately 639,000 Burundian refugees in neighbouring countries, plus a further 200,000 living in Tanzanian settlements since 1972.¹ As of November 2002, there were approximately 380,000 IDPs living in camps for IDPs and an unknown number of men, women, adolescents and children who are otherwise dispersed in Burundi. The UN Office for the Coordination of Humanitarian Affairs estimates that the current conflict may be generating as many as 100,000 new displacements each month.²

In 1998, negotiations for peace were initiated. In August 2000, a Peace Agreement was signed by most, but significantly not all, of the parties to the conflict.³ No cease-fire was agreed upon although negotiations for a cease-fire continue. The peace agreement remains fragile and could collapse at any time. Civilians continue to be caught in the middle and the number of deaths continues to rise. Both rebel forces and extremists within the Burundi military are implicated in attacks against civilians and humanitarian aid organisations. Regional instability and conflict also complicate prospects for peace in Burundi.

Broadly, three categories of IDPs, with some movement between the categories, are referred to in Burundi: the displaced in IDP camps, the regrouped in regroupment or former regroupment camps (camps established when the military removed the local population to facilitate their military operations) and the dispersed who do not live in camps but in the forests and marshes or with relatives or friends. In addition, some refugee returnees have subsequently become internally displaced. Urban street children and other homeless populations have grown in size because of the conflict although they tend not be considered IDPs.

The situation of the regrouped best illustrates the challenges in Burundi of determining when displacement ends. Regroupment has been a tool of the Burundian government since 1996 when about 300,000 persons, mainly Hutu, were forced into camps, ostensibly for their own protection. Most of these camps closed in 1998 but the last quarter of 1999 saw the creation again of regroupment camps, officially termed 'protection sites'. Conditions inside the camps were for the most part appalling and some of the camps were inaccessible to humanitarian agencies.⁴ Women and children were especially vulnerable when food was short; at food distributions they were often sidelined, sometimes despite efforts of distribution agencies.⁵ There were also reports of the rape and sexual abuse of women and young girls in the camps.⁶

There was almost universal condemnation of the camps and extensive calls for their closure. Most were dismantled in the third quarter of 2000 following pressure from Nelson Mandela, the international community and local organisations.⁷ The final pressure came from the rebel groups who made closure of the camps a precondition for joining the peace negotiations. The camp closures occurred within a very short period and with no preparation for the safe return of the regrouped. Some camps were closed very quickly, either because the authorities wanted them emptied as fast as possible but more often because as soon as the camp population was allowed to leave they did, despite the risks and conditions they then faced.



UNHCR/Stone

When the regrouped population left the camps, many faced serious risk. Fighting continued or even intensified in many areas to which the regrouped returned. While the international community rightly demanded the closure of the camps, neither they nor the government made adequate preparations for this contingency. The location of most of the formerly regrouped population remains vague. Many appear to have gone home but others are believed to still be living in or near regroupment camps. Still others are likely to have moved to Bujumbura or other parts of the country. No statistics are available on the relative size of each group.

Internment camp for Hutu IDPs in Cashikanwa area, Burundi

For those who were able to return home, life has been far from secure. The homes and livestock of many have been looted or destroyed in whole or in part. In some areas the water system has been destroyed. Insecurity due to rebel and/or military activity remains a real threat both for those previously regrouped and those wishing to assist them. It is commonly reported that formerly regrouped IDPs return home only to be forced to flee from their homes to escape attacks from one or the other side of

the conflict. The humanitarian agencies that provided the minimal assistance allowed in the regroupment camps generally were unable to accompany the regrouped to their homes because of the unsafe conditions.

Security is the principal constraint on assistance and protection to IDPs in Burundi. As the peace process has progressed, the fighting has in fact increased and continues to this day. Since aid operations have been directly targeted, it has been particularly difficult to reach vulnerable populations. A further impediment to effective humanitarian assistance to IDPs and other war-affected populations has been the weakness of the UN in Burundi, particularly after the murders of several senior UN staff in 1999.

The deterioration in the security situation inside the country and the

inability to forecast when peace will be established and what will happen in the meantime have made operating conditions for humanitarian aid agencies particularly difficult. Too often, aid agencies are unable to reach displaced populations because of the security barriers, effectively ending assistance and protection though not the displacement itself. Burundi epitomises the worst way in which displacement as an issue of international concern comes to end – when the internally displaced are out of sight and hence out of mind of international actors.

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Colombia: the end of displacement or the end of attention?

by Amelia Fernández and Roberto Vidal

The development of policies for people internally displaced by the violence in Colombia is characterised by a tension between the approach of the government, which is predominantly operational,¹ and that of the Constitutional Court, which has championed a focus on human rights by way of jurisprudence.²

The growing intensification of internal armed conflict almost entirely limits the option of return. The state is not able to guarantee the civilian population's safety, especially when they have been directly threatened by armed actors who remain in the areas from which people have fled. At present, there is no real reintegration of displaced people in Colombia. Solutions for the displaced population therefore currently depend on the possibilities for urban resettlement. The government, however, has placed emphasis on return programmes for various reasons: i) the cost of resettlement of people from rural areas in urban areas is higher than that of return, according to the government's



calculations; ii) local government authorities are reluctant to receive the displaced, as they associate them with armed groups and with increased social insecurity and urban marginalisation; iii) return is seen as a possible way of consolidating the government's control over disputed territories.

Within the governmental system of support for the displaced, an information mechanism has been established

whereby the population must register in order to access state services. Although the Constitutional Court has determined that displacement is an objective fact and that the register has simply a declarative function, the registration of the displaced constitutes a necessary condition for accessing government support. Consequently, displacement ends, officially at least, upon exclusion from the state register.



UNHCR/P. Smith

Another reason for the end of assistance concerns vague criteria such as displaced people's "lack of cooperation" or "repeated renunciation" of state politics, according to government assistance services. This has created justified fears of the possibility of setting up some sort of political control over the displaced and their organisations. Governmental sources show that there have been cases of exclusion from the register.³ Some of these cases, according to displaced people's organisations, have been leaders of the displaced who have demonstrated against government policy. Exclusion or threats of exclusion seem to be used as means of political pressure.

The government's system of assistance is highly formalised. For example, people can only be registered if they were displaced during the previous year; humanitarian assistance is only given for three months (extendable to three more months in special cases); and actual support is subject to the availability of funds. The government is studying the possibility of using criteria for the "cessation of the condition of being displaced" based on the provision of services, which would mean that those displaced who have received assistance under the limited terms

established by the government would be excluded from the register.

The result of using these formalised criteria has been long periods of neglect of the displaced who then disappear from the official registers once they have received short-term assistance. There is fear that formalised criteria that meet the priorities of the state but not the necessities of the displaced population will be imposed on those excluded from the register for the displaced, which would result in a total lack of protection.

The ending of the status of being displaced should not lead to a total absence of support; displacement assistance should instead be gradually replaced by programmes of more general assistance that would nonetheless meet the same standards as for displacement assistance, in a lasting and dignified way.⁵

The notion of an end of displacement raises many fears among displaced populations insofar as it entails the end of support, the availability of which is already precarious. What seems particularly risky is the analogy between the politics of the displaced and that of refugees (i.e. use of the cessation clause), especially if in doing so there is an attempt to

transfer the restrictions that states impose on asylum seekers and refugees onto the relationship that exists between a state and its internally displaced citizens, which entails obligations relating to their human rights. Ultimately, the necessities of the very operational approach to the issue taken in Colombia ends up restricting the rights of internally displaced people.

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1. The Colombian government has created a complex group of institutions and norms that are formulated in the National System of Care and Prevention of the Displaced Population.

2. The Constitutional Court is the court of appeals in the Colombian judiciary system. Since 1994 the Colombian Constitutional Court has produced more than 60 pronouncements related to forced displacement due to violence. Even so, these correspond to a tiny fraction of the country's cases which have been discussed through the judicial system.

During the 'Day of Documentation' in Ciudad Bolívar, UNHCR's Mobile Registration Unit will help local IDPs apply for identification cards.

Narrowing criteria cannot solve IDP problems

by Greta Zeender

The case of Rwanda demonstrates significant differences among leading agencies and policy makers working with displaced people in their understanding of displacement and resettlement concepts.

At the heart of the problem is the UN agencies' and NGOs' struggle to agree on whether Rwandans relocated into new villages should be considered permanently resettled or still displaced.

Over the last decade, Rwandans experienced repeated waves of displacement, the latest in 1998 when several hundred thousand people in the northwest were moved into supervised camps. The government justified this action as a protection measure against insurgent actions but many observers saw it primarily as a way to deprive opponents of support. At the end of that year, the government ordered these camps to be dismantled and the displaced to be relocated to new villages.

The UN Office for the Coordination of Humanitarian Affairs (OCHA), UNHCR, the UN Special Coordinator on Internal Displacement and the US Committee for Refugees (USCR) used different criteria to decide when displacement ends. Differences centered on whether resettlement was permanent, if basic humanitarian needs were met and how voluntary and durable the solutions were.

Changing criteria

Some agencies, by changing their criteria, appeared to write off thousands of IDPs. In mid-1999, OCHA counted some 500,000 IDPs previously displaced in northwestern camps and then resettled in villages. That year, OCHA narrowed its criteria and counted only 150,000 people who received direct humanitarian assistance in the resettlement villages. In mid-2000, OCHA adopted an even more restrictive approach, excluding the newly relocated people on the grounds that

they had all been moved to their final location: either to former homes or new villages. OCHA then used the term 'newly relocated' instead of 'resettled', noting that "a number of sites are lacking basic infrastructure and a large number of families are under plastic sheeting."¹

At the end of 1999, UNHCR talked about an intermediate category – some 625,000 returned IDPs – calling them 'people of concern' to the agency. In fact, rather than having 'returned', the majority of Rwandan IDPs had been resettled. The following year, IDPs in Rwanda ceased to appear as a category of concern to UNHCR.² Thus in UNHCR's eyes resettlement seemed to have ended displacement.

By 2001, OCHA announced that there were no more displaced people in Rwanda. OCHA's Senior Adviser on IDPs, in December 2000, undertook a mission to Rwanda at the request of the UN Special Coordinator on Internal Displacement. He estimated that the resettlement was permanent and that durable solutions had been found for the IDPs. "While conditions of return and resettlement are often yet inadequate, governmental and international efforts to stabilise the situation through durable solutions have advanced beyond the threshold of what still could be called internal displacement," he concluded. The Adviser also looked at whether the process of resettlement was voluntary, deciding "there is no evidence today that [the resettlement policy] is implemented with a degree of compulsion which would warrant the label of 'forced displacement'."³ His criteria for ending displacement seem to be: permanent resettlement, a durable solution and a reasonable degree of voluntariness.

The UN Special Coordinator on Internal Displacement disagreed. He said that it was politically problematic to say that there were no more IDPs in Rwanda when, in Burundi, people who had been resettled for decades were still counted as IDPs, although they lived in acceptable conditions. At this point, both turned to the Representative of the UN Secretary General on Internally Displaced Persons for guidance.

A leading NGO meanwhile considered humanitarian needs and permanent location to be criteria for the end of displacement. USCR concluded that about 150,000 Rwandans were internally displaced at the end of 2000, primarily people at villagisation sites without proper shelter or land allocations. USCR reasoned that people lacking essentials such as proper shelter and farming opportunities at government-designated sites could not be considered permanently resettled. The following year, however, it counted no Rwandans as internally displaced, noting only that unknown displacement might still exist due to the government's resettlement policy.⁴

Resettlement should be voluntary and durable

Permanent resettlement was the only criterion that all actors viewed as necessary to end displacement. Some organisations considered other criteria as necessary but came to different conclusions on whether they had been fulfilled. It was only in 1999 for OCHA and end of 2000 for USCR that fulfilling basic needs became an explicit criterion to end displacement.

The forced nature of resettlement, however, was widely overlooked. Despite numerous UN and NGO reports of coercion during the resettlement process, none of the relevant organisations viewed the forced aspect of resettlement as serious enough to continue to consider the resettled people as displaced people.

Also, the durability of solutions was generally not seen as a decisive factor in ending displacement. The need for durable solutions is derived from the UN Guiding Principles on Internal Displacement 28 and 29, which state that competent authorities shall endeavour to facilitate the reintegration of resettled IDPs and assist them to recover their property or appropriate compensation. But only OCHA's Senior Adviser on IDPs stated that efforts to stabilise the situation through durable solutions had advanced beyond what could still be called internal displacement. Complicating matters, durability is

highly debatable in a country where close to one million people still live in inadequate shelters lacking basic services, three-quarters of them in the northwest.⁵

The case of Rwanda shows the importance of agreeing on when displacement ends, and to consider how voluntary and durable resettlement has been. Narrowing definitions is no way to make the problems of displaced persons disappear.

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Sierra Leone: resettlement doesn't always end displacement

by Claudia McGoldrick

Almost one quarter of a million displaced Sierra Leoneans were resettled in their areas of origin by the end of 2002, officially ending the internal displacement crisis in the country and further consolidating recovery after more than a decade of devastating civil war.

A success story, in which the wishes of internally displaced people themselves prevailed, said some observers. Not so, insisted others, pointing to numerous flaws and problems along the way.

So was the resettlement process really the final chapter in Sierra Leone's displacement story? Arguably not, at least with respect to durability of return and resettlement as required by the UN Guiding Principles.

From relief to recovery

Since April 2001 there has been a concerted effort to resettle large numbers of Sierra Leonean IDPs - as well as returning refugees - and to phase out IDP camps. At that time, the UN shifted its IDP assistance efforts from protracted provision of humanitarian relief to support of resettlement and recovery efforts, confident of advances being made in the peace process and increasing stability throughout

the country. This confidence appeared well-founded: by the end of 2001 the world's largest UN peacekeeping mission was deployed across the country and a disarmament programme was completed. In January 2002, President Ahmad Tejan Kabbah declared an

official end to the 11-year civil war, which had killed an estimated 50,000 people and displaced up to half of the country's 4.5 million population.

Displaced Sierra Leoneans were resettled in accordance with the national government's Resettlement Strategy, which applies to IDPs as well as refugees and ex-combatants with their dependants, and states that it will "only facilitate resettlement into an area when it is deemed that the area in question is sufficiently safe to allow for the return of displaced

IDPs and returnees, amputee camp, Freetown, Sierra Leone



Claudia McGoldrick

people in safety and dignity".¹ UNHCR was one of numerous agencies that helped to plan and implement the strategy, aiming to harmonise the resettlement of refugees and IDPs. Both groups were offered resettlement packages, which included a two-month food ration, household utensils, plastic sheeting and, in some cases, transportation. According to OCHA, a total of some 220,000 registered IDPs were resettled in five phases between April 2001 and October 2002. Many more returned home spontaneously. Officially at least, this left no more IDPs in Sierra Leone.

Displacement continues

Not surprisingly, the resettlement process raised some thorny issues. Firstly, what is the real number of IDPs in the country? Nobody can be sure, since over the past decade of conflict there have always been large numbers of unregistered IDPs. This is important because only registered IDPs have been eligible for assistance in the camps, and for resettlement packages. With registration itself often unreliable, there may still be an unknown number of IDPs who are not recognised and will not be assisted to return home.

Secondly, there are also many IDPs who do not wish to be resettled. Their reasons vary: some are traumatised, some have security fears related to their areas of origin, some have lost their coping mechanisms and have become dependent on camp life, while others are still unwilling to return to areas where they know there is a lack of infrastructure and basic services. Many have become urbanised in the capital, Freetown, and in the words of one aid agency, "will strictly not be IDPs in the 'assistance' sense of the word". Since one of the principles of the government's resettlement strategy is to discourage dependency on humanitarian aid and prolonged displacement when areas of return have been declared safe, there is little if any assistance available for 'residual' IDPs.

Another contentious issue is that some IDPs may have been resettled to unsafe areas. The declaration of areas as 'safe for resettlement' - the main factor in effectively ending displacement - is based on a number of criteria spelled out in the government's resettlement strategy. These criteria include the complete absence

of hostilities, unhindered and safe access of humanitarian workers and sizeable spontaneous return movements. Virtually the entire country has been officially declared safe for resettlement. But concern has been expressed in some cases that certain areas were prematurely classified as safe, or that established criteria were not properly applied, especially in light of the volatile situation in Liberia that has already resulted in cross-border raids and abductions of Sierra Leonean civilians. The downsizing and eventual withdrawal of the UN peace-keeping force, UNAMSIL, has heightened anxieties for some. Allegations have also been made that insufficient or even misleading information was given to displaced people about conditions in their areas of origin.

A further cause for concern is that inadequate resettlement packages, combined with a chronic lack of shelter and basic services in areas of return, have caused many resettlers to drift back to urban areas. Plans for community rehabilitation programmes have in many cases not yet been developed, partly due to insufficient donor funding.

Resettlement or eviction?

Many of these problems have been highlighted by NGOs such as MSF and Refugees International. According to MSF, the "process ... more closely resemble[d] eviction than resettlement ... due to a lack of respect for the basic rights of the people to be able to choose their fate, and to be treated with dignity at each stage of their return."² In some cases, reported MSF, people were being resettled to areas considered by the UN as too dangerous for its own staff. While the UN acknowledged that numerous challenges had arisen during the resettlement process, which needed to be urgently addressed, it also said that the MSF report to some extent focused on specific issues out of context, thereby misrepresenting the full reality of the situation.

The resettlement process in Sierra Leone has suffered lack of agreement on even the most basic definitions. The absence of reliable statistics has meant that it was unclear who was an IDP to begin with, so naturally it remains unclear as to when IDP status ends. While some people maintain that displacement cannot end without fulfilment of the UN Guiding Principles - requiring safe, dignified and durable return and resettlement - others insist that the majority of IDPs in Sierra Leone returned even when informed of the real situation in their home areas and that ultimately the will of IDPs themselves to end their displacement prevailed. For those IDPs not wishing to return for various reasons, the government decided they should no longer be considered IDPs. The prevailing lack of consensus over these fundamental issues has, at the very least, shown that there must be more to the label 'IDP' than simply a formal status granted or removed by the authorities without full regard to conditions on the ground and that there can, in some cases, be a fine line between voluntary and forced return.

Lessons must be learned from this experience and future mistakes avoided. Sadly, the cycle of war and displacement that has plagued Sierra Leone, Liberia, Guinea and, more recently, Côte d'Ivoire will ensure that these issues are kept very much alive.

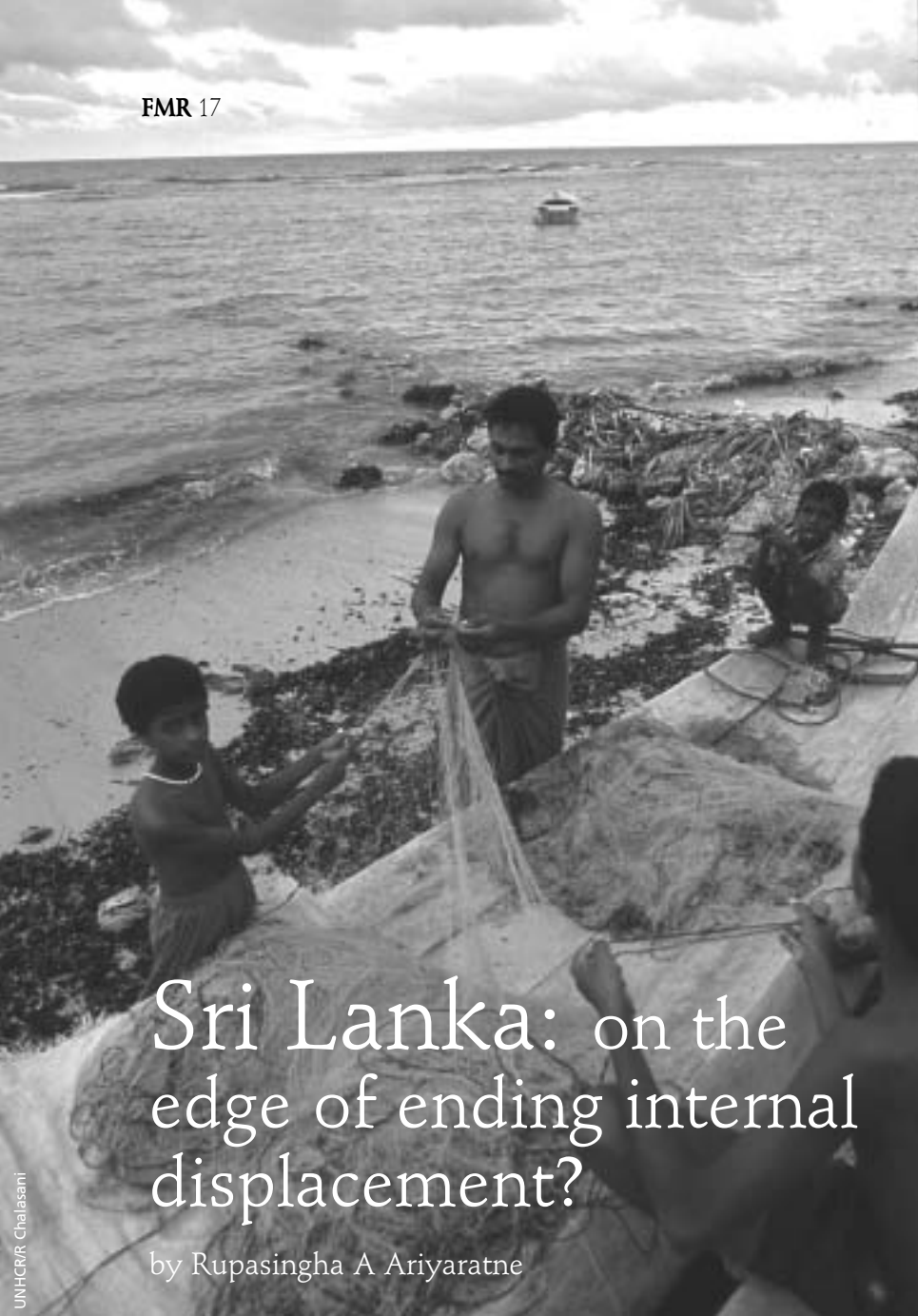
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Destroyed school, Eastern Province, Sierra Leone.





Sri Lanka: on the edge of ending internal displacement?

by Rupasingha A Ariyaratne

Before Sri Lanka's twenty-year-old civil war ground to a halt following the February 2002 ceasefire between the government and the rebel Liberation Tigers of Tamil Eelam (LTTE), approximately 70,000 people were killed, over 750,000 were internally displaced and another 700,000 or so fled the country. In the absence of appreciable progress on the political front, a pall of scepticism overshadows the prospect of effecting speedy resettlement of those displaced during the armed conflict. The initial alacrity with which the displaced communities greeted the peace process is beginning to give way to more cautious optimism.

Over 230,000 IDPs have headed home in the north since the cease-fire. This means that, barring those who do not intend to return, another 500,000 remain to be resettled. The most daunting task is to resettle nearly

125,000 non-Tamil IDPs displaced from LTTE-controlled areas and some 50,000 Tamils from the military-held High Security Zones. By the end of June 2002, only 600 Sri Lankan refugees living in India had approached UNHCR for permission to be repatriated. There is even less interest shown by the Sri Lankan Tamil diaspora in the possibilities of return.

There are formidable obstacles to resettlement, requiring joint effort on the part of the international community and the national authorities:

- **Absence of tangible proof of durable peace**

Though unfamiliar with the finer points of peace agreements, the displaced receive constant feedback on the state of the war and the cease-fire from sources such as the LTTE undercover operatives in the south, military personnel

placed at the security posts near the relief centres, NGO workers and civilians, particularly those in the northeastern border villages. Resulting fears of conditions in areas of return need to be allayed before the post-cessate-fire trickle of returnees can become a sustained flow.

- **Lack of mechanism to guarantee security, both en route and at the destination**

Physical security is vital to human existence, yet the IDPs' perceptions of security vary, depending on the nature of the causes of their flight. For instance, a person displaced as a result of being caught up in the cross-fire may settle for clear signs of an end to military hostilities as the minimum indicator of security needed to return, whereas the victims of 'ethnic cleansing' would additionally look for the convincing signs of a change in behaviour on the part of their former 'tormentors' as a precondition to return. The post-battle nervousness permeating the cadres of soldiers on the ground, reinforced by numerous 'grey' areas of responsibility for physical security, makes it even more hazardous for IDPs moving around the country.

- **Dispute over the issue of dismantling the military High Security Zones (HSZ)**

The LTTE demands the dismantling of HSZs in the Jaffna peninsula - a move rebuffed by the government on security grounds. Although the number of IDPs displaced from the current HSZs is relatively small (about 50,000), the issue of the HSZs has become a major stumbling block for implementing resettlement plans in general; IDPs know from past experience that even a minor tussle between the two main parties to the conflict may trigger a major conflagration. Both sides have apparently thought it prudent to sidestep the problem and have informally agreed on resettling people outside the security zones.

- **Inadequate protection from the risk of landmines and unexploded ordnance**

Demining must be prioritised as an essential precondition for implementing resettlement schemes. Reportedly, about one million landmines have been laid

Returnee fishermen in Point Pedro, Jaffna area, Sri Lanka

in the former war-zones, and only 10% of them were removed in 2002. IDP community leaders say that an international body like UNHCR or UNICEF ought to take responsibility for monitoring demining, with powers to declare any area which is not cleared of landmines unsuitable for resettlement.

■ **Lack of convincing evidence of sustainable conditions to support durable return and resettlement**

A combination of minimum infrastructural facilities, such as shelter, water and sanitation and a modest income, is needed to sustain a decent lifestyle. An ambitious plan is already underway to build new housing units and to repair/reconstruct damaged houses in the former war-affected areas. However, these would accommodate less than 25% of the existing IDP population. The package of resettlement cash allowance and dry food rations provided to resettling families is hardly adequate to persuade IDPs to leave the relief centres.

Even once physical resettlement occurs, IDPs would still be left to grapple with a number of issues:

■ **Land and property**

IDPs are naturally keen to obtain restitution or compensation in respect of lost land and property. Property disputes, however, are known to take an inordinately long time to solve and therefore IDPs

do not usually make land and property settlement a precondition for returning home. Property issues, however, can be even more difficult to resolve at that stage.

■ **Political volatility**

In the absence of a political settlement, and because of uncertainties of political legitimacy, disputes related to the conflict occur almost daily, sometimes provoking violent reactions from both sides. The fall-out from such squabbles invariably tends to dampen what little enthusiasm that IDPs feel on returning home and may upset the resettlement process.

■ **Disinclination to return**

Even under the best of conditions, and especially after a protracted period of displacement, some IDPs tend not to want to return. These 'stayees' are drawn from highly disparate groups, such as those who are fully or partially integrated with the host societies; have found employment opportunities; did not have land/property in the areas they fled from; have bought land/property in the south; have younger family members who have settled into city life; or are traumatised as victims of 'ethnic cleansing' practices.

■ **Reintegration support**

Reintegration usually marks the longest and, for all intents and purposes, the final stage in the

process of ending displacement. Judging by the Sri Lankan experience, the phenomenon of socio-economic integration is as complex as the causes of displacement. It requires international support, particularly in advocacy programmes and monitoring instances of human rights violations.

The spectre of displacement will cease to haunt the returnees as well as those who choose not to return only when the whole range of these issues is adequately dealt with through sustained national and international effort. While the international community has a vitally important contribution to make to overcome the **obstacles** outlined earlier, it should play only a peripheral role in dealing with the latter **issues**; the onus of their practical realisation should rest with the national authorities. However, it is not possible to fix a specific timeframe for ending international protection and turning responsibility entirely over to the national authorities, because the two sets of issues are inextricably intertwined and need to be addressed in tandem and in overlapping stages.

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Confusing deadlines: IDPs in Indonesia

by Christopher R Duncan

When does an IDP stop being an IDP? In Indonesia the answer was supposed to be: on 31 December 2002. This was the deadline announced in late 2001 when the government released its plan describing how it would solve the 'problem' of the more than one million IDPs spread across the country.¹

The government's plan contained no details on how this was going to be accomplished other than providing three options for IDPs: i) returning them to their place of origin, ii) empowering them in their current location (i.e. integration) or iii) relocation. This new policy was greeted with confusion by many IDPs because it was announced at a time when people were still being displaced by ongoing violence in various parts of the archipelago. The document also announced that all government aid to the displaced would cease on 31 December 2001. This led some IDPs to speculate that it was aimed at mollifying host communities, many of whom were beginning to wonder when the IDPs were going to stop receiving aid and go home or integrate into the local community.

The ethnic, religious and political conflicts that followed the fall of the Suharto government in 1998 have displaced over 1.3 million people in Indonesia. Approximately half were displaced as a result of the ethnic and religious unrest in the eastern Indonesian provinces of Maluku and North Maluku. Although many of the conflicts have stopped, many IDPs have yet to go home. The return or integration of these IDPs remains of paramount importance to the Indonesian government as there have been reports of conflicts between them and host communities. Since it was conflicts between indigenous communities and migrants that created many of these IDP situations, their return or integration must be dealt with properly, or regional govern-

ments will simply be sowing the seeds of future conflicts.

The halt of government support at the end of 2001 affected IDPs in differing ways. A large majority were able to get by on their wages and the small amounts of aid they received from church groups or NGOs. Most IDPs had learned to cope without government aid, as corruption and mismanagement had depleted it significantly. However, those from more rural areas who lacked marketable job skills and older IDPs unable to do the manual labour jobs available were harder hit. Thus the policy did hasten the return of a small percentage of IDPs or, if they did not feel safe going home, simply displaced them to new, more rural communities.

Officials seemed to have a complete disregard for the situation on the ground, often urging people to return to places at the same time as new IDPs were arriving from those locales, fleeing renewed hostilities. As an incentive, the government promised IDPs that the North Maluku government and the armed forces would guarantee their safety - not reassuring when it was the failures of these two bodies that led to their displacement in the first place. IDPs were also mistrustful of their former neighbours who had often turned on them during the conflict. Officials rarely took IDP trauma into account when discussing their return.

The deadline has come and gone and there are still hundreds of thousands of IDPs in Indonesia.

Suggestions for improving the resolution of IDP situations:

1. Do not address the needs of victims of social conflict as though they are victims of a natural disaster.

While flood or earthquake victims can usually go back home as soon as the water subsides or the tremors stop, IDPs from social conflict cannot. By demanding that IDPs go home, officials contribute to the deterioration of relations between IDPs and host communities as the latter begin to think that the IDPs are simply staying to exploit aid.

2. Teach regional officials and NGO workers the basics about the social conflict that created the IDPs with whom they are working. Lack of knowledge about the conflicts affects the ability of civil servants and NGOs to work with IDPs, particularly when trying to assist them to return home; it also intensifies feelings of mistrust between IDPs, officials and NGO workers.

3. Encourage/require internally displaced civil servants to move out of IDP camps. Their presence within IDP camps caused a large amount of resentment among both host communities and IDPs. Research showed, that although internally displaced civil servants living in the camps did face numerous difficulties (occasionally their salaries were not paid), they were generally better off than other IDPs. Their removal from the camps, only after they have obtained paid positions within the local government, would have been a step towards improving relations and freeing up aid for IDPs in greater need.

4. Set up an office to coordinate the return of civil servants to their original provinces. A major problem in rebuilding conflict regions has been the flight of civil servants, including school teachers. In North Sulawesi many civil servants from North Maluku wanted to return when the

fighting had stopped but were hindered by their need to find jobs and arrange the complicated paperwork. A coordinating office could facilitate these transfers. District heads from recovering regions would submit lists of their personnel needs, to be posted in IDP camps and government offices.

5. When building resettlement sites for IDPs, include homes for needy segments from the host community and provide clear and rigid guidelines concerning eligibility. (This is already standard policy for transmigration projects.) In building new housing, the government must provide guidelines concerning who is eligible for the free housing and the status of the housing (whether the IDPs take ownership or have 'use' rights); these must be enforced in a consistent and transparent manner.

6. Ensure greater coordination between provincial governments. In the North Sulawesi case, there was initially only limited coordina-

tion between provincial governments – and chaos ensued. Boatloads of returning IDPs arrived in North Maluku without any warning, forcing local communities, already dealing with thousands of IDPs, to find housing and aid for more.

7. Do not focus on IDPs living in camps to the exclusion of those living outside. Government offices and NGOs (both local and international) erroneously believed that people

living outside camps did so because they were better off financially. They failed to take into account the role played by IDPs' arrival dates. The first groups of IDPs from North Maluku were from urban areas, consisting largely of civil servants, merchants, and skilled labourers, most of whom found employment in North Sulawesi. Wealthy merchants and high level officials did not live in camps but some of those who could afford to live outside the camps instead chose to remain in the camps in order to exploit the low costs of living and access to aid. In contrast, the final groups of IDPs were often from rural areas and thus less able to find employment. They arrived after the camps were full; they had to rent homes and received less aid because they lived outside the camps.

8. Provide IDPs with reliable sources of information. IDPs need up-to-date information regarding the current situation in their former places of residence, the current government programmes aimed at them and their rights as IDPs. Local NGOs should fulfill this need.

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This article is based on 18 months of anthropological fieldwork (2001-2002) among IDPs from North Maluku living in North Sulawesi.

1. This document, titled *National Policies on the Handling of Internally Displaced Persons/Refugees in Indonesia*, was released by the Minister of Social Affairs, Yusuf Kalla.

A North Maluku IDP boards a boat to return home from North Sulawesi carrying canned goods given to him by the government.



The southern Caucasus experience

by Marco Borsotti

After gaining independence following the Soviet Union's dissolution, the southern Caucasus republics of Azerbaijan and Georgia saw a difficult period of transition characterised by internal and external inter-ethnic conflicts¹ that forced more than 1.44 million people to abandon their homes.² The majority of those affected became internally displaced, while some became refugees by crossing internationally recognised borders. By 1994 almost all the fighting had come to an end in these conflicts, with the exception of sporadic violations of cease-fire agreements and, on two occasions, brief resumption of hostilities between militias. The conflicts resulted in destruction of infrastructure, loss of lives and displacement of the majority of the resident population in those parts of the countries affected by war who were forced to abandon their homes due to their ethnicity. Efforts made with assistance of the international community to find durable solutions and bring peace have so far been unsuccessful.

There are some important considerations that are common to all of these conflicts. Governments in both countries have been supportive of their IDP populations, providing them assistance in cash and in kind. However, this support, even if it represents a burden for their state budgets, is still insufficient to provide dignified living conditions for IDPs. Return of IDPs to their place of origin is a key element in peace negotiations since the right to return has been sanctioned by the international community as one of the principles in finding a solution to the conflicts. However, peaceful settlements to these conflicts remain elusive and there is no international political consent to use force, if necessary, as there was in the case of Kosovo to guarantee the right to return and enforce Security Council resolutions. Prospects for early return are difficult to assess but seem poor in the short term. As a consequence, IDPs are in a sense hostages of their situation since their political leaders consider them instrumental for peace negotiations. Furthermore, IDPs cannot benefit from the same rights as

other citizens, such as the right to vote in local elections.

In both countries, the majority of the population is living below the poverty line. Independent surveys have found that IDPs are not significantly more vulnerable to poverty than the rest of the local population. However, as a result of limitations on the exercise of their rights, for instance as regards access to cultivable land and access to credit, poverty alleviation is particularly difficult for IDPs. The governments, with the support of the international community, are in various stages of preparation of integrated strategies to promote economic development to halve poverty.

In Azerbaijan and Georgia, efforts have been made to convert IDPs from a 'burden' on the state budget into development actors. Without renouncing their right to return, they should not be denied the opportunity to build for themselves a comfortable and dignified life in their place of displacement. The key for development is promotion of economic self-sufficiency by giving IDPs access to jobs, land, proper shelter, health, education, credit and infrastructure. It is necessary to recognise that IDPs have the same rights and therefore should enjoy the same opportunities available to all other citizens. Both in Baku and Tbilisi, this idea was promoted by UNHCR, UNDP and the World Bank, and has gained the governments' agreement and donors' support. Trust funds were established to finance initiatives originating from the IDPs themselves for innovative projects designed to generate employment, improve living conditions and help IDPs escape hardship. These projects should also facilitate IDPs' integration in host communities and benefit these communities as a whole.

In both countries, these approaches are already integrated into government programmes to promote economic development as part of comprehensive strategies that recognise IDPs' needs and their potential contribution to the national economy. It is recognised that the more self-reliant IDPs become, the less they will

represent a burden both while displaced and when finally able to return to their original homes. Meanwhile, the IDPs' contribution to the development of their country will emerge from the underground economy, where it is mostly relegated, to find recognition and support.

This process in Azerbaijan and Georgia has had its difficulties but has already demonstrated that an alternative exists to treating IDPs solely as recipients of humanitarian assistance. In fact, if a lesson could be learned, humanitarian programmes should have been phased out earlier in order to assist IDPs to participate fully and on an equal in the economic development of their countries, all the while ensuring assistance for those who still need it. Less dependency would have been created and government subsidies and donor aid could have been utilised more effectively and transparently. In both countries, the process of designing poverty reduction strategies is offering governments an opportunity to consider IDPs' development as an integral part of efforts to improve living conditions for all citizens. International efforts to defend IDP rights, particularly the Guiding Principles, have oriented the governments' and donors' thinking toward the same approach.

The southern Caucasus experience indicates that when large-scale displacement occurs, the international community and governments should not only provide emergency assistance but also immediately begin to integrate assistance to IDPs within existing and future development plans. In this way, dependence will be minimised and IDPs will have better opportunities to cope with their trauma with greater self-sufficiency and in a more dignified and sustainable manner.

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1. In Azerbaijan the conflict was for control of Nagorno Karabakh, while in Georgia the conflicts were for control of Abkhazia and Tskhinvali.
2. See Global IDP Database at www.idpproject.org

Iraq: dilemmas in contingency planning

by Clare Graham

The crisis in Iraq exemplifies the dilemmas inherent in contingency planning that face today's humanitarian community.

This article asks: if contingency planning is both standard practice and an intrinsic duty of humanitarian agencies, what were the sources of tension over preparing for an Iraqi crisis and what are the implications for any effective response?

Participation in a controversial crisis?

Although contingency planning should be an integral part of the work of any humanitarian agency, the primary issue to confront planners for Iraq was the pressure not to engage overtly. In contrast to the war on Afghanistan, there was little support for a pre-emptive US-led military attack and appeals to the UN resulted in bitter international disputes. As well as wishing to maintain the faith of the international community in weapon inspections and its Security Council, it was imperative for the UN to maintain dialogue with the Iraqi government and to avoid fuelling any speculation that it was resigned to war.

UN humanitarian programmes had to work within these confines. Additional constraints stemmed from the presence of on-going operations in Iraq and the surrounding region. The Kuwaiti government, for example, was worried that talk of preparations would act as a pull factor for potential refugees. Aid agencies within Kuwait were consequently reluctant to disclose details of their own plans for fear of upsetting the authorities. Whilst the fear of sparking refugee movements may stem from a misunderstanding of contingency planning, the UK-based Iraqi Refugee Aid Council reported rumours of supplies at the Kuwaiti border to be an indication of the direction in which people would move. The political question was therefore how to ensure that any planning, locally or elsewhere, would

not be misconstrued as a prediction of an emergency. As rumours spiralled, the UN was keen to stress that contingency planning was standard – not exceptional – practice and that no predictions could be drawn from either the content or the timing of its governmental briefings.

Every humanitarian organisation has a duty to plan. With a long lead-in time for pre-positioning supplies and physical preparations on the ground, the requirement to plan came also from practical considerations. This is a lesson learnt from bitter experience. In the 1991 Gulf War, the numbers of refugees fleeing the US-led air campaign were much smaller than predicted but no-one foresaw the mass exodus following the subsequent crushing of insurgencies within Iraq. During the Spring of 1991, more than 500 Iraqis a day died from exposure, hunger and illness in the remote border regions of Turkey and Iran – a consequence of weather conditions, difficulties in gaining access and the unpreparedness of agencies, authorities and donors. Mindful that the international community is unforgiving to those who are taken by surprise, the UN began contingency planning for Iraq as early as February 2002 and pre-positioning of supplies towards the end of the year.

Planning in uncertainty

The events which forced the current crisis – and the added complications of the Kurdish issue, the alleged presence of nuclear, chemical and biological weapons, and the effect of sustained economic sanctions – led to



WFP/Maarten Roest

an unprecedented state of uncertainty. Iraq's prolonged pariah status and the limited NGO presence within Iraq added to the speculation, which is part of any contingency planning, as agencies proposed varying scenarios and attempted to put appropriate response systems in place. The absence of insight from local NGOs and the political limitations of planning in country both hindered plans. The information available pointed to serious concerns surrounding the effect of conflict on an extremely vulnerable population already affected by a decade of war and 12 years of sanctions and largely dependent on food rations under the Oil for Food programme.

In contrast, the variations in displacement scenarios were informative only as an expression of all the imperposables involved. In mid-February, the Under-Secretary-General for Humanitarian Affairs cited a 'medium case' scenario, under which 2 million people could become internally displaced with a potential exodus of 600,000 to 1.45 million people. At the outset of war it was widely assumed that most of Iraq's 25 million people had at least six weeks of rations and

Prepositioned emergency food aid in WFP warehouse near Amman, Jordan, 2003

would sit tight, security permitting. Planning for displacement is complicated by more than the questions of 'how many?', 'where to?' and 'how fast?'. Even days after the military campaign was underway, it was still not known who the lead agency for internal displacement would be. Furthermore, accurate assessments of the scale of need in internally displaced situations cannot take place if conflict makes access hazardous. Once borders are crossed, displacement becomes more visible yet more political. UNHCR took the lower number of potential refugees as its working figure and preparations in neighbouring countries proceeded on that basis. UNHCR's main concern is always to keep borders open. The need for this in terms of security, shelter and assistance is well documented. When nearly 400,000 Kosovar Albanians fled during the first two weeks of the NATO bombing campaign in 1999, Macedonia was severely criticised for barring refugee entry and aid agency access. In one incident 70,000 people waiting at the border were reported missing, raising concerns of their use as human shields.

Upholding the fundamental principles of *non-refoulement* and access to territory is always an unrelenting diplomatic challenge. Amongst Iraq's neigh-

bours, Iran is the only full signatory to the 1951 Convention. However, Syria was the first and, for a while, only country to publicly announce that it would accept refugees. In February, Iran rejected the option of sheltering refugees, preferring transit camps or camps within Iraqi territory. It promised to open its borders but only on a very limited basis, restricting access to those in 'physical danger'. Jordan also relented in February but remained ambivalent. It committed itself to keeping its borders open. However at the same time it also announced it was turning back thousands of 'ordinary' Iraqis and only welcoming better-off Iraqis coming for business or investment.

The primary responsibility for refugees falls to the governments of host countries but Iraq's neighbours are still coping with the political and economical aftermath of the 1991 Gulf War. Iran received 1.3 million refugees, 200,000 of whom still remain in the country in addition to more than 2 million Afghans - each costing an estimated \$674 a year to accommodate, with only \$6 of that coming from international aid. Persuading Iraq's neighbours to offer

effective protection requires the promise of wider support by the international community. In the event of massive outflows and a prolonged conflict this could require resettlement programmes as well as funds. Turkey, though a signatory to the 1951 Refugee Convention, is the only country in the world to maintain its so-called 'geographical limitation' to cover European asylum seekers only. This means Iraqis in Turkey can receive only temporary protection and must be resettled. Yet in Kuwait there are already over 3,000 Iraqi refugees from the previous conflict still seeking this very option. The situation faced by local humanitarian agencies was summed up by the head of the Kuwait Red Crescent Society: to leave refugees in camps is inhumane - to let refugees live amongst the local population is "dangerous".

One thing that planners could safely assume was that the main determinant of any humanitarian emergency would be the duration and intensity of war. Once again, however, the specifics of the Iraq crisis exacerbated potential perils. There are several scenarios in which aid agencies, both inter- and non-governmental, stated they could not operate and would be forced to withdraw international staff. Given the ethnic divisions within Iraq and the Kurdish issue in particular, internal disorder resulting from a military attack could destabilise the entire region. Aid agencies have also stated that they are not equipped to operate in the event of

Displaced Iraqi Kurds return home - in 1991 - after the first war with Iraq.



chemical and biological warfare.

Since the gassing of Kurdish civilians in Halabja in 1988, the Kurdish population and the international humanitarian community have made some preparations against future attacks but neither have had the resources to go beyond simple training, stockpiling, makeshift sealing of buildings and snatched vaccination programmes. Either development would introduce a further set of unknowns which might lead to a sce-

nario where humanitarian agencies felt unable to operate.

ary space. From providing purely logistical support and security in the aftermath of the 1991 Gulf War, the armed forces' role in humanitarian operations has since increased significantly. NATO's lead in refugee protection in Kosovo brought military and humanitarian action to a political crossroads. The path since has seen the controversial emergence of Disaster Assistance Response Teams 'embedded' in the US military already operational in Afghanistan and planned for Iraq.

the Iraq crisis reflects yet another shift in the trend towards a blurring of humanitarian and military space.

As humanitarian action

nario where humanitarian agencies felt unable to operate.

Planning in an increasingly politicised humanitarian space

Following the passing of Resolution 1441, calls for greater openness in UN and governmental planning intensified. The difference in opinion on how open the dialogue has been and should be reflects the divide between those for and those against war, with the UN caught in between. Supporters of secrecy point to military necessities. Their opponents are fearful of limitations to effective inter-agency response and a greater freedom being afforded the military in humanitarian assistance.

While the possibility of UN-sanctioned force still existed, NGOs remained unsure of their role and the acceptability and timing of engagement. As planning developed from contingency to post-conflict, the uncertainty of the role of humanitarians increased. In February it was reported that the US military planned to handle initial humanitarian relief efforts and then gradually hand over responsibilities to the UN and other aid organisations. The US NGO network, Interaction, expressed its concerns over the leadership role designated to the military. Pointing to their own principles of neutrality, impartiality and independence, UK NGOs indicated their unwillingness to operate where the authorities of an occupying power were not accepted by the population.

It is clear that the Iraq crisis reflects yet another shift in the trend towards a blurring of humanitarian and mili-

becomes increasingly politicised, the humanitarian community is demanding greater UN leadership. The challenges of this changing world order are diverse and require discussion in their own right. The implications for contingency planning for Iraq may be reflected in levels of preparedness. At the outset of conflict USAID was apparently ready. The NGO community repeated that it lacked the resources or information to prepare for anything but the widely-held and optimistic scenario of a quick campaign. As the military campaign did not come under UN auspices, this modified the appeals of the NGO community. The Disasters Emergency Committee, representing 12 UK-based NGOs, announced that it would fundraise and operate only under the banner of the UN.

However, the UN itself remained under-funded. In February an appeal for \$123 million was made to fund the preparedness of nine agencies, including \$60 million for UNHCR to cover plans in the region for an initial month. A week after war had started and with few reported refugees, UNHCR had received only \$25 million. The US was the first country to publicly announce funding for UNHCR contingency plans. Donor countries outside the coalition were only ever likely to respond when conflict had begun and an emergency was upon them. Opponents to war were reluctant to fund at all. Germany and France opposed EU funding for a humanitarian situation they perceived as the responsibility of occupying powers.

For the humanitarian community, effective response demands availabili-

ty of standby resources and there are very real worries that agencies will have to divert funds from emergencies elsewhere in order to achieve a minimal level of preparedness. UN agencies may have to borrow from internal reserves, divert funds from other emergencies or simply wait for funding. NGOs face similar funding difficulties, also knowing that the money may not be available from any source until the emergency has already started.

Implications for an effective response

The threat of conflict in Iraq presented many unknowns for contingency planners. The only certainty was that conflict would deepen an already existing humanitarian emergency. The ability to prepare thoroughly was impeded by a lack of information, coordination and funds as well as the threat of chemical and biological warfare. All compounded the potential effectiveness of a humanitarian response. However, the greatest constraint was the web of political tensions surrounding Iraq.

Now, as everyone watches the crisis in Iraq unfold to find out who has guessed best, less is being learned from - and less support given to - emergencies elsewhere. Although any future emergency will present a different set of uncertainties and constraints, the nature of both the conflict in Iraq and the humanitarian response may well warn contingency planners of the changing role their agencies will be expected to play in future emergencies. Whether planners feel this role will allow them to respond effectively is another matter.

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The views expressed here are her own and the discussion is based solely on publicly available information.

1. House of Commons International Development Committee *Preparing for the Humanitarian Consequences of Possible Military Action Against Iraq*, Fourth Report for Session 2002-03 Vol 1, p.8; UNHCR *The Iraq Emergency - An Uncertain Crisis* www.unhcr.ch

Domestic violence on the Thai-Burma border: international human rights implications

by Caroline Lambert and Sharon Pickering

This article focuses on domestic violence against women living in camps, highlighting both the potential and the limitations of human rights standards in bringing change to women's lives.

Women from Burma who live in the camps along the Thai-Burma border are increasingly coming into contact with the concept and practice of women's human rights. For many women, learning about rights is a significant part in the process of recognising experiences of injustice and accessing remedies or protection. While levels of awareness are increasing, however, the effects of such change are limited to the women themselves. Indeed, among the women we spoke with, there was a recognition that adopting a human rights framework could be detrimental to women, placing them at risk of family and community disapproval. In addition, as the women are without legal status in relation to the Thai state, the primary dependence of human rights mechanisms on the nation state for the realisation of human rights further diminishes their usefulness as a means of remedy or protection.

Domestic violence in camps

Many of the women we spoke with identified domestic violence against women in the camps as an issue of serious concern.¹ As women's organisations have become more established and a greater number of women have become involved in activism within the camp communities, they have sought to create a multi-faceted series of interventions to address domestic violence, involving the individuals and the camp committees.

At the level of the individual, many of the women we spoke with discussed the ways in which learning and talking about human rights increased

their confidence to speak out about behaviour they considered unfair or unjust:

It tells you what is wrong and then what is not right, and then you also know that you can express what's right, that your rights were being violated.

Learning about human rights and recognising that women have human rights challenged the way women and men in camps thought about domestic violence:

[F]or example, in the camp we have some case, it is domestic violence. ... at the beginning we think the women are not good. So yes, the husband should beat, like that. Now we change the opinion.

As awareness of the incidence of domestic violence increased and women's organisations brought the issue into the open, other strategies became possible, including establishing huts in the camp that women could go to when they needed to escape violence. In particular, women stressed the importance of women's organisations having a physical presence in the camps and being available to help women talk with their husbands about why their behaviour is wrong:

So also they, they call both husband and wife and they explain them about not hitting like this. We are human being, the same human being and not to hurt each other.

Moreover, women's organisations have begun to demand more comprehensive responses from the section

leaders or camp committees, including the involvement of women in decision-making structures. One woman noted that even if the government failed to implement human rights treaty obligations, the fact that women know about them has changed the way they interact with their local communities:

We can also compare what the leaders should do or they should not do, so it makes more understanding of what the state should do to the women...

Identifying domestic violence as a human rights violation empowers both individual and collective action and contributes to the eradication of the practice. It is no longer dependent on individual women taking isolated action.

Domestic violence in international law

Domestic violence has had a fractious relationship with international human rights law. While throughout the 1990s women's human rights activists loudly proclaimed that violence against women is a human rights violation, the political players at the UN were less convinced. The 1993 Declaration on the Elimination of Violence Against Women deliberately did not name violence against women as a human rights violation, choosing rather to elaborate a series of rights which were detrimentally affected by such violence.² More recently, the Beijing Plus Five outcomes document characterises violence against women as a human rights **issue**, recognising that violence against women perpetrated by state actors is a human rights violation.³ However, the negotiators resisted the argument that there is a state responsibility to ensure the human rights of all individuals in their territory. This notion - 'due diligence' - requires that states take concrete steps to respect, protect and fulfil all human rights obligations.

Any act of violence against women, including domestic violence, therefore constitutes a violation of human rights if a state has failed to implement programmes and legislation which work towards the eradication of domestic violence in their community.

The central point of contention is the different status accorded to acts perpetrated by state and non-state actors within human rights law. Human rights law is predicated on the accountability of the state: realisation of rights and remedies for violations are mediated through state mechanisms. So while the gendered dimensions of state-sponsored violence against women have been recognised (for example in the recognition of rape as a war crime within international humanitarian law), the issue of violence perpetrated by non-state actors remains contested. At a legal level the Committee on the Elimination of Discrimination Against Women (CEDAW) has clearly elaborated the nature of states parties' legal obligations with respect to the eradication of violence against women; the Committee recognises that violence against women is a form of discrimination and that states parties to CEDAW have therefore an obligation to eliminate violence against women as part of their legal duties owed under the treaty.

Limitations

The state-centric focus remains a significant impediment to the use of human rights, particularly in relation to domestic violence for women in many locations around the world. This issue is compounded for women living along the Thai-Burma border. Around the world domestic violence is perpetrated by an individual with varying levels of censure by the community and by the state. Within a human rights framework, however, the only entity with clear accountability for human rights violations is the state. Therefore, while women may experience a level of personal empowerment, they remain dependent upon broader community acceptance of equality between men and women and their equal entitlement to the realisation of human rights.

Even when women are able to raise issues of human rights with their husbands, if their husband rejects them there is very little recourse for the

women, particularly if they are frightened of further violence or economic hardship or community disapprobation:

Probably with some of the women leaders they are quite assertive and they can discuss these things with their husbands, but only telling them. But to really do something against it, I still cannot see.

The challenge for women remains that the views of their husbands very often reflect the dominant views of the community that domestic violence is a private issue between family members. While the requirement to take steps to change such attitudes is an obligation under CEDAW and the Platform for Action, for women living along the Thai-Burma border it is very difficult to identify the state which bears responsibility. Both Burma and Thailand have signed CEDAW, which requires that states parties take measures to eradicate all forms of discrimination against women, including violence. But it is almost impossible to hold the authorities in Burma accountable – and most of the women activists along the border do not recognise the military junta in Burma as a legitimate government. The Thai government imposes strict restrictions on individuals living in refugee camps and local police officials have an antagonistic relationship with those living in the camp. Women from camps and migrant workers have reported violence perpetrated against them by Thai law enforcement officers and the Women's League of Burma has argued that such violence is often treated with impunity.⁴ So while the provisions of CEDAW should extend to all those living in a territory, in practice women face extreme difficulty in accessing the mechanisms of the Thai state.

In place of the formal apparatus of the state, the camp committees take on a de facto state role – notably in the distribution of food and health care and the provision of education. Many women noted that the Camp Committee, often dominated by men, fails to take the issue of domestic violence seriously. While women may go to the camp committee to discuss women's human rights, the formal legal mechanisms of the UN human rights treaty system again fall short in addressing the most influential organisational entity in women's lives. In

preparing their Shadow Report⁵ for the CEDAW Committee, women from Burma stressed their frustration over the inability to address the actions or inaction of the camp committees.

UNHCR has observer status in the 14 camps along the border. An important next step for our research is to examine the ways in which UNHCR is engaging with such issues. One woman who lived in a camp and was involved in women's organising discussed with us the difficulties women face in bringing the issue of domestic violence to the attention of external agencies, including UNHCR. She talked about the practice of UNHCR and NGOs coming into the camp and talking to the camp committees but not talking to women.

Conclusion

Discussion of international human rights has brought a number of gains for women living in the camps on the Thai-Burma border, particularly relating to increasing women's individual and shared empowerment. However, these gains are significantly challenged by the lack of state responsibility. There is a need for NGOs and UN agencies to take a stronger and clearer role in relation to issues of domestic violence, and be made more accountable for both the camps and the levels of domestic violence in the camps.

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1. They also referred to sexual violence perpetrated by agents of the SLORC/SPDC and violence against undocumented women living and working in Thailand.
2. Declaration on the Elimination of Violence Against Women, UN Document A/Res/48/104, February 23, 1994.
3. Report of the Ad Hoc Committee of the Whole of the 23rd Special Session of the General Assembly 2000, UN Document A/S-23/10/Rev.1, paragraph 13.
4. *Ibid.*, 30.
5. A Shadow Report is an alternative account of a country's performance under CEDAW submitted by NGOs.

Benchmarks and yardsticks for humanitarian action: broadening the picture

by Koenraad Van Brabant

A serious debate has developed in recent years with regard to 'standards' for humanitarian action.

The focus of this debate has been the 'minimum standards' of the Sphere project but that debate is now expanding to one on 'quality assurance' of relief/humanitarian action.¹ One of the questions being asked is whether the Sphere standards are indeed a central tool in determining whether humanitarian aid has achieved 'quality'.

This debate on standards follows an earlier one on principles which goes back to the formulation of the 1994 Code of Conduct for the Red Cross and NGOs in disaster relief. This Code of Conduct in particular has been most influential in international NGO circles, inspiring a number of field level codes of conduct, notably the Joint Policy of Operations in Liberia, the Sierra Leone Code of Conduct and the Principles of Engagement for Emergency Humanitarian Assistance in the Democratic Republic of Congo.

Thanks to dissemination, advocacy, training and follow up among and by international NGOs, the Sphere standards and the Red Cross and NGO Code of Conduct have achieved centre stage position in the awareness of many organisations, including Western donor administrations and some UN agencies.

Supporting roles: international legal instruments

Although staff and associates of the Sphere project emphasise that the Sphere Charter is as important as the 'minimum standards', the reality is that the technical delivery minimum standards are better known and more actively used by aid workers than the Charter with its very brief references to the Refugee Convention, Human Rights Law and International Humanitarian Law. While the Refugee Convention may be a daily reference

for UNHCR, for example, it is neither well known nor regularly used by international NGOs (often the operational partners of UNHCR) – hence the creation of the Reach Out project to familiarise aid workers across the globe with the Refugee Convention.²

The Convention on the Rights of the Child (CRC) is a daily reference for an organisation such as UNICEF and some child-focused NGOs such as the Save the Children Alliance. It has also been actively used to inspire the 'ground rules' that Operation Lifeline Sudan in 1995-96 negotiated with the factions in southern Sudan. But the CRC is certainly not as actively advocated, used or referred to in NGO and donor circles as Sphere and the Code of Conduct.

The situation therefore seems to be one whereby legal instruments, ratified by many if not most states in the world, seem to have less prominence in NGO circles than two yardsticks developed by NGOs but with no legal status.

Broadening our perspective

There is a much wider range of relevant yardsticks or benchmarks that can – and sometimes must – be used to plan, review or 'judge' the quality of a performance and to hold agencies to account. These yardsticks have different status. The challenge for managers, monitors, reviewers and evaluators is to more consciously consider the range of possible benchmarks, including those that are obligatory because of their legal status, and to choose those that seem most relevant in a given context.

The numbered table overleaf shows the range of benchmarks and indicates some of the organisations or inter-agency projects that have developed the instrument or actively guard and/or

promote it. Note that the various references have a different status. Some are inscribed in law while most are not. An organisation is not obliged to accept an inter-agency benchmark and some are of the view that they are only bound by legal references and their own internal yardsticks.

1. **International and national legal references:** These spell out rights and obligations. Of particular relevance here is the constitution of a country. While typically little known to the overwhelming majority of people, a constitution spells out rights and obligations within the national framework. In certain circumstances, it can possibly be a more powerful tool for advocacy and accountability in the country where humanitarian action takes place than an international convention or an interagency 'code'.
2. **National policy framework:** National policy may be perceived by some as inappropriate in certain crisis situations, or even counter-productive, but it is preferable that aid agencies argue their case with the national authorities rather than simply bypass them. The latter practice undermines the credibility of local authorities and also contributes to the perceived confusion of roles and responsibilities that aid agencies then subsequently lament.
3. **Inter-agency references:** Some refer to rights and principles. As such they have no formal legal status but are fairly widely accepted. They can be given a more authoritative status by the national authorities. Some countries, like Colombia, have incorporated the Guiding Principles on Internal Displacement into national law. Uganda has used them to develop a National Policy Framework on Internal Displacement.

4. A series of other guidelines, developed on an **inter-agency** basis, refer more to good practices.
5. Each organisation also has a series of **internal references**, ranging from mission and values statements to policy statements and practical manuals, which it has developed internally and against which it can plan, monitor and review its performance.
6. Finally, there are **situational references** that can be used as yardsticks: project agreements (with donors but also with intended beneficiaries), operational plans, etc.

Responding to the earthquake in Gujarat, India

As with previous evaluations, the UK's Disasters Emergency Committee evaluated the response of British NGOs to the earthquake in Gujarat in terms of the Red Cross and NGO Code of Conduct and the Sphere standards.³

When the ACT network⁴ evaluated its Indian members' response to the same disaster, it asked them which references and benchmarks they thought were most relevant. Although aware of the Code and the Sphere standards, they **first** pointed to legal-political benchmarks such as the Indian constitution, the Panchayat Raj Act, the Juvenile Justice Act, the Land Acquisition Act and the Disability Act. **Secondly**, they drew attention to policy frameworks. Of great significance were the various policies developed by the Gujarat state authorities with regard to compensation to disaster victims and the adoption of villages requiring reconstruction. Also relevant was the Indian Relief Code. Drawn up in the 19th century, it is widely seen as outdated and, because of its focus on drought and famine, inappropriate for cyclone or earthquake risk and disaster management – but it is still an active reference for the Indian public administration in the management of any disaster. So far, lobbying efforts for it to be updated have not had any impact. **Thirdly**, for technical standards, they would consult not the Sphere handbook but the India Standards Code Book, which includes, for example, specifications on earthquake-resistant building.

In short, for these Indian actors operating in an environment where there is a functioning state that has accepted its responsibility for disaster management, it is much more relevant to work with, and try to improve, national and/or state laws, policies and standards than to refer to vaguer international ones which have no legal clout.

Resettlement and rehabilitation in Sierra Leone

A key benchmark, first developed in 1997 and recognised by international NGOs, was the Code of Conduct for Humanitarian Agencies in Sierra Leone. This was inspired by the Principles and Protocols for Humanitarian Operations developed in 1995 in Liberia and can be seen as one of the field-level translations of the 1994 Red Cross and NGO Code of Conduct. Various respondents in an inter-agency survey conducted for the Humanitarian Accountability Project referred to it as an active benchmark for their organisational conduct.⁵

However, by January 2002, it appeared that many newly arrived international NGOs seemed to have lost interest in the Code.⁶ This was surprising given that there had recently been intensive dissemination of the Code, albeit targeted at armed groups such as the army and policy and the UN peace keepers rather than at aid organisations. Sphere standards were also fairly well known and used among the international NGOs in Sierra Leone. But while international human rights organisations such as Human Rights Watch in Sierra Leone actively refer (in their reports and lobbying) to international human rights law and national legislation, and even sometimes to international humanitarian law, the focus on a Code mainly developed by international NGOs and on the Sphere standards prevented recognition by aid agencies of other highly relevant standards.

One of these might be the Constitution of Sierra Leone⁷ which spells out the rights of citizens and the responsibilities of the state. Another one, highly relevant in the Sierra Leone context, would have been the Guiding Principles on Internal Displacement, which few agencies actively seemed to work with. A policy document such as the Resettlement Strategy of the

National Commission for Reconstruction, Resettlement and Rehabilitation (October 2001) should have been a central reference. Internal agency benchmarks could also be applicable. Some of these would be generic, such as the agency's mission and value statement, while others would be context-bound. Examples of context-bound references that can serve as yardsticks would have been UNHCR's 'Plan of Operation: Repatriation and Reintegration of Sierra Leonean Refugees' (September 2001) or a written project agreement between an aid organisation and its intended beneficiaries.

Interestingly enough, a major aspect of the reaction of the aid organisations in Sierra Leone to the 'sexual abuse' report of UNHCR/SC-UK has been to develop another benchmark: Standards of Accountability to the Community and Beneficiaries for all Humanitarian and Development Workers in Sierra Leone. But this is again an inter-agency product with no legal status and does not make any reference to legal obligations in the home country where agencies are registered or in the host country.

Crisis-affected people themselves may also hold benchmarks, perhaps more implicit than explicit. Conversations in Sierra Leone show that affected people value an agency that 'keeps its word', that acts with transparency, with whom there can be sufficiently regular contact and whose staff are not arrogant but ready to listen and to treat people with dignity.

One significant problem is that the affected people are often not – or not well enough – informed about benchmarks so cannot themselves act as monitors or watchdogs. As organisations in Sierra Leone not only want to provide material relief and rehabilitation assistance but also promote good governance, which includes greater accountability, it seems they are missing here an opportunity to lead by example. That point seems to have been understood in the wake of the UNHCR/SC-UK report, as it is reportedly the intention to widely disseminate the Standards of Accountability for aid personnel behaviour among the Sierra Leonean people. Yet few agencies have any programmes to inform ordinary Sierra Leonean citizens about their constitutional rights and their rights under

1. LEGAL OBLIGATIONS

- International Human rights Law
- International Humanitarian Law
- 1951 Refugee Convention
- Convention on the Rights of the Child

- Laws of Country of Association
- Constitution of country of operation
- Laws of country of operation

UNHCHR
ICRC
UNHCR (Reach Out)
Sphere Charter
UNICEF

2. NATIONAL POLICY FRAMEWORK

- Disaster policy and management framework
- Sectoral policies

3. INTER-AGENCY REFERENCES ON RIGHTS & PRINCIPLES

- Guiding Principles on Internal Displacement
- Red Cross and NGO Code of Conduct

Global IDP Project
DEC (UK)

4. INTER-AGENCY GUIDELINES FOR GOOD PRACTICE

- People-In-Aid Code
- Guidelines for the Protection of Refugee Women
- Guidelines on Older People in Disasters and Humanitarian Crises
- Good Practice Reviews
- Sphere sectoral standards
- Local Capacities for Peace
- Coordination on protocol

PIA
UNHCR
HelpAge
HPN
Sphere
LCP Project
Interaction

5. INTERNAL REFERENCES

- Values and principles
- Policies and procedures
- Code of personal conduct
- Sectoral manuals

6. SITUATIONAL REFERENCES

- Operational plans
- Project agreements

international and national law, and to train local people in basic legal aid.

In – provisional – conclusion

Because the Red Cross and NGO code and the Sphere project have received so much attention, at least from international NGOs, there is a real risk that other standard-setting benchmarks or yardsticks come to be seen as less important. That would not only be a methodological mistake; it would also be a strategic political mistake because it gives the impression that (international) 'NGO products' are more important than state-developed legal standards. Moreover, NGOs have generally been very reluctant to allow any authority to exercise oversight over their adherence to certain principles and codes of conduct.⁸ So, in practice, the unintended effect is to replace 'hard law' with weaker instruments. This undermines rather than strengthens the rule of law.

Mainstreaming the use of benchmarks in humanitarian action and relief work is a task of management. They may be encouraged to do so if monitors, evaluators and authorities exercising oversight start using a wider variety of benchmarks, not simply referring automatically to some well-propagated ones but choosing those that are actually mandatory and/or relevant. It would be refreshing to see programmes evaluated, for example, against the CRC, the Guiding Principles on Internal Displacement and even an agency's values. This could only increase the agency's credibility, legitimacy and accountability.

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1. See for example 'Enhancing the Quality of Humanitarian Action. Conference proceedings', The Hague, Dutch Ministry of Foreign Affairs: (www.hapgeneva.org/pdf/La%20Hague%20conference%20Proceedings.pdf)
2. See www.reachout.ch/
3. See www.dec.org.uk
4. See www.act-intl.org
5. See Van Brabant 'Promoting Transparency and Accountability. The Humanitarian Accountability Project fieldwork in Sierra Leone (November 2001-May 2002)', 2002, Geneva, HAP (www.hapgeneva.org)
6. Interview with member of Code of Conduct committee.
7. See www.sierra-leone.org/documents.html.
8. The inter-agency Code of Conduct committee in Sierra Leone, e.g. only had an advocacy and advisory role. Donors were represented on it but reportedly did not make adherence to the Code a criterion in funding decisions. The rejecting of any effective authority for the Committee even went so far that no meeting minutes were produced.

Urban refugees in Mauritania

by Channe Lindstrom

A largely desert country, the Islamic Republic of Mauritania forms a link between the Arab Maghreb and western sub-Saharan Africa.

As such, it covers a cultural transitional area with the population divided between Arab-Berbers to the north and black Africans to the south. Mauritania is one of the least developed nations in the world. Legal and social infrastructure remains rudimentary. Political power and economic wealth is concentrated in the hands of a few. While Mauritania only recently has come to be regarded as a stable country for its own nationals, it has now become host to a relatively significant number of refugees from a variety of sub-Saharan countries.

The majority of urban refugees in Nouakchott, the Mauritanian capital, are from Sierra Leone. They began to arrive in 1997 at a time when UNHCR was about to close its office following the conclusion of its voluntary repatriation scheme for Malian refugees. Since then, the refugee population has been steadily increasing with 50-100 new arrivals each year. The majority are between 18 and 59 years of age (20% are under 18 years of age) while 43% of the total population are female.

UNHCR status determination

Despite the fact that Mauritania has acceded to the 1951 Geneva Convention Relating to the Status of Refugees and its associated 1969 New York Protocol as well as the 1969 Organisation for African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, Mauritania has yet to adopt a national law regarding the status of refugees, nor has it established a national eligibility procedure for the granting of asylum. In view of the absence of institutional structures to protect and uphold the rights of refugees, UNHCR in Nouakchott examines all requests for asylum.

The only official paper issued by UNHCR to validate an individual's refugee status is a renewable 'attestation' valid for between three and six

months. The attestation is only a document of protection; it does not necessarily grant refugees the right to resettlement or financial assistance. Moreover, this paper is not always respected by the law-enforcement authorities.

Assistance to refugees

When an individual's application for asylum is pending, no material or financial assistance is granted to the refugee. Many refugees turn to the mosques and churches as well as the Mauritanian Red Crescent who provide blankets, food and some financial assistance to anyone deemed in desperate need. Many refugees concede that begging is a common practice.

"We have no means of providing for ourselves; we are just receivers. I have surrendered myself to the UNHCR." (Refugee in Nouakchott)

A partnership between UNHCR and the Lutheran World Federation (LWF) - the only implementing partner of UNHCR in Mauritania - was initiated in April 1999. LWF administers and implements the programme of Emergency Assistance to Individual Urban Refugees in Nouakchott but has insufficient resources to meet the high demand for services. UNHCR has reduced its funding and the resources at LWF's disposal have consequently suffered.

Refugees are assisted by LWF through the distribution of food, clothing and blankets; payment of medical bills and costs of shelter and education; a refugee school; and micro-credit schemes. Equal amounts of assistance are given to each family - a relatively new policy instigated by the UNHCR Protection Officer to prevent conflicts within the refugee community and avoid allegations of favouritism.

Access to employment

Although Mauritania is obliged under Article 17 of the 1951 Geneva Convention to grant recognised

refugees the right to work, not one refugee interviewed had been granted a work permit nor heard of any others who had obtained such a permit. Most refugees do not believe, however, that a work permit is necessary for them to carry out labour in those informal sectors of the economy where they have found work; due to weak administrative infrastructure and a lack of enforcement resources, the government has adopted a laissez-faire approach.

The majority of urban refugees in Nouakchott support themselves by casual labour in the largest market in Nouakchott while others work as barbers, hairdressers, carpenters, plumbers, electricians, construction workers and fishmongers. The majority, however, are self-employed in tailoring. LWF micro-credit schemes have been set up in order to create and sustain incentives for entrepreneurial activities.

Access to education and healthcare

Unlike the right to work, access to the rights of education and healthcare do not require permits. As a signatory to the 1951 Convention, Mauritania is required to accord refugees the same treatment as nationals with respect to elementary education and the same treatment as 'aliens' with respect to secondary and further education. Refugees must also be accorded the same level of healthcare treatment as nationals. However, as Mauritania provides its citizens with neither free elementary education nor healthcare, access to both depends almost entirely on whether one can afford the costs. (The only health care facility provided free of charge is child vaccinations.) The difficulties encountered in attaining employment generally mean that refugees find it difficult to afford these services. LWF has no medical facilities but in a medical emergency a refugee is taken to hospital by the refugee representative responsible for medical assistance - and the treatment is paid for. Reimbursement of minor medical expenses is usually delayed for up to a month, a practice which places sick and vulnerable individuals under considerable strain.

UNHCR is reportedly negotiating with the Mauritanian authorities to recognise the primary school qualifications of refugee children. Uprooted and generally English-speaking, these children need a curriculum that is adapted to their needs and allows them to learn Arabic and French in order to integrate into the Mauritanian educational system. Two volunteer teachers give free courses at four primary school levels for 75 children. The Canadian Fund for Local Initiatives in Mauritania provides equipment and school supplies. Even so, refugees reported that there was a severe shortage not only of teachers but also of books and other educational materials.

Prevalence of discrimination, detention and deportation

Regardless of their nationality, most refugees interviewed assert that racism and cultural intolerance towards foreigners are prevalent among the Mauritanians. UNHCR's 'attestations' are issued to regularise residence and provide protection for the refugee population. However, it was widely reported that these are not respected by the law-enforcement authorities who have had no training in refugee issues. The threat of detention is real, despite the possession of a UNHCR attestation. Refugees are

often arrested in the hope of extracting a bribe. Although the entire population is arbitrarily harassed by police officers asking for bribes, refugees are a particularly vulnerable and targeted group. If one is not able to pay bribes, refugees report having been detained at the local police station for up to one week before being released. The Mauritanian Association for Human Rights reports substantial abuses in detention committed by police forces against refugees. Several cases of deportations have been reported.

Administrative weakness in the form of a lack of understanding at the municipal level (e.g. policemen not recognising a refugee card) and national level (e.g. deportation of refugees, thereby violating the principle of *non-refoulement*) leads to unjust treatment of refugees. Ironically, however, it is the country's administrative weakness and underdeveloped economy that simultaneously prevent the commitment of greater injustice because these characteristics reduce the government's capability to effectively conduct mass detentions and deportations.

Conclusion

The Mauritanian government has failed to translate its international

obligations towards the protection of refugees' rights into national policy. Although it nominally accepts the granting of refugee status determined by UNHCR, it does not issue any formal recognition. UNHCR Mauritania continues to offer local integration as its primary – if not only – 'durable solution'. This should not be considered as 'durable' until, at a minimum, national laws are put in place to ensure the protection of refugees. Mauritania's inability to fulfil its international obligations is due to a combination of factors. Being an underdeveloped country, it finds itself short of the resources which ensure respect for refugee rights; Mauritania's weak and un-harmonised administrative structures hinder the development of a transparent and coordinated refugee policy.

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This is a summary of a report commissioned by the Forced Migration and Refugee Studies Programme, American University, Cairo. The full report, which details the situation of other refugee groups in Mauritania as well, is available at www.aucegypt.edu/academic/fmrs (under reports).

Refugees from Mail, Bassikounou camp, Mauritania





UNHCR/Isaiah Refugee Service

Sri Lanka's fragile peace

by Nicholas Van Hear

In February 2003 Sri Lankans marked a year since the cease-fire between Government of Sri Lanka armed forces and the Liberation Tigers of Tamil Eelam (LTTE). While tensions have remained, the peace process that has been in motion since early 2002 has transformed the atmosphere in the country and lifted the oppressive fatalistic fear that has blighted much of Sri Lanka's population of around 19 million for nearly 20 years of conflict. People in the conflict areas of the north and east are now able to go about their daily lives with a much greater degree of normality than for a long time, not least because of the removal of ubiquitous checkpoints and the much greater mobility that has become possible as a result.

What the agencies have inelegantly labelled the 'post-conflict, pre-peace' phase has raised the prospect of the return of IDPs and eventually of those who have sought refuge abroad. Based on local government records, it appears that some 240,000 displaced people have returned to their districts of origin (though not necessarily their homes) since the peace process got under way. This figure does not capture the substantial number of people who have maintained registration (and receipt of government rations) in their place of displacement but have returned to their places of origin to see if they can reclaim their houses and land and re-establish a life there. Many people, displaced and refugees, are adopting a 'wait and see' attitude before they commit themselves to permanent return. Until peace is more firmly established and conditions at home are more secure, UNHCR is not encouraging return of refugees from Tamil Nadu in south India, where they number around 100-120,000, about two thirds of whom live in some 100 camps in the state. A few thousand have nevertheless returned, mainly to Mannar and Jaffna districts.

These return movements have not been without problems. In particular,

property issues are boiling up as returnees try to reclaim land and houses which are occupied by other displaced people who have nowhere to go - because their own land or houses are damaged or destroyed, occupied by others, in areas heavily mined, or occupied by the army. In response to the new situation, UNHCR and other agencies have beefed up their operations to assist the displaced. While there is still much room for improvement, the organisational structures of the humanitarian regime, including the government which operates an imperfect ration system for the displaced, function fairly well in Sri Lanka. With luck, these efforts will be backed by donor funding to secure lasting peace in the coming years - though the lessons from elsewhere, notably Afghanistan, are not encouraging in this respect, not to mention the implications of war with Iraq. A major donors conference is planned for June in Japan.

The real challenges lie not in organisational change - more 'coordination' - but in the local, regional and international political economy. As they have done elsewhere in post-conflict societies, the World Bank and other agencies and donors will attempt to co-opt the humanitarian agencies to shape post-conflict Sri Lanka in a neo-liberal mould. Donor assistance for immediate reconstruction needs is already being made conditional on such moulding - through reform of the legal and property rights systems, for example. The leverage donors will have as a result of Sri Lanka's burgeoning debt (largely military) in coming years will also be substantial. While some such 'adjustment' may be warranted, humanitarians will need to be wary of co-optation and be ready to contest the excesses of such leverage if the transition to peace is to be consolidated and the refugees and displaced are to be enabled to reconstruct their lives.

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Angola: from plans to action?

by Cecilie Winther, DanChurchAid, and Nina M Birkeland, Nord Trøndelag University College

In FMR 16, in her article on IDP protection in Angola, Kamia Carvalho concludes: "Despite a good start, Angola still has a long way to go" as regards implementation of the Guiding Principles. Since then the official number of IDPs has fallen from 4.1 million to 2.8 million. Immediately after peace accords were signed in April 2002, people started to move away from their places of refuge. However, simultaneously, people who had not been able to flee from occupied areas migrated into areas - often the provincial capitals - where they hoped to receive assistance, thereby adding to the IDP statistics. And it is questionable whether the 1.3 million who were formerly counted in the official statistics have indeed established livelihoods at home or in new places of residence in accordance with their rights as described in the Guiding Principles.

Angolan authorities claim that much of the reduction in IDP numbers is a result of spontaneous return. However, information from the field suggests that not all 'spontaneous' return was voluntary. And in areas where return has indeed largely been voluntary, returning IDPs find that there is no basic infrastructure, significant numbers of landmines are still in place and there are no resources available to meet their basic needs.

The Angolan government has written the Guiding Principles into national legislation and on 5 January 2001 adopted the national Normas for Resettlement of Displaced Populations. The Normas should ensure minimum standards for safe, voluntary and sustainable return. The Provincial Plans of Emergency Action for Resettlement and Return were drafted in accordance with the Normas in June 2002 by the government and the humanitarian community. These were comprehensive plans outlining relief,



UNHCR/Isaac Refugee Service

rehabilitation and reconstruction needs which have served as guidelines for humanitarian actors in the country. In reality, the government has concentrated its limited funding on rehabilitation of infrastructure rather than social services and immediate assistance. Once again the humanitarian community has been charged with the enormous task of providing for the basic survival of the displaced. With the continued lack of funding, the humanitarian actors have obviously not been able to cover all needs but forced to prioritise among acutely vulnerable populations. Despite good intentions, the Normas still have not worked their way from paper to reality. The Angolan authorities are good at producing plans and writing documents fulfilling the requirements of international donors and the UN but implementation and use thereof are less than exemplary.

1. Global IDP Project: www.idpproject.org

Humanitarian accountability

by *Asmita Naik*

A new organisation regulating the activities of humanitarian organisations was launched at a conference on 'Accountability and humanitarian operations: present and future directions' held in Copenhagen in February 2003 and convened by DANIDA, the Danish International Development Assistance office, and the Humanitarian Accountability Project, HAP.

The debate about humanitarian accountability was set in motion by the humanitarian intervention following the genocide in Rwanda. An evaluation of the aid effort criticised it for "poor coordination" and "regrettable rivalry", resulting in "duplication and wasted resources" and even "unnecessary loss of lives". Intervention in Kosovo was similarly criticised. More recently, last year's scandal of sexual exploitation of refugees by aid workers and peacekeepers in West Africa was a watershed for the humanitarian accountability debate. According to

Agnes Callamard, HAP Director, "West Africa ... brought the issue to everyone's attention. Before that, some organisations felt accountability to crisis-affected populations as of little priority ... the heightened media scrutiny made agencies realise the importance of being able to hold each other to account."

After the Rwanda crisis, the idea of a humanitarian ombudsman – as an impartial monitor and investigator – was mooted. A variety of initiatives were developed, including HAP, People in Aid, ALNAP (the Active Learning Network for Accountability and Performance in humanitarian action) and the Sphere project. HAP's recently concluded two-year research programme found "evidence of a lack of accountability, even more evidence of a lack of understanding of accountability, but ... a real commitment to want to do things better".

The new organisation – intended as a successor to HAP – will be a self-regulatory body with a mandate to provide technical support. While this is a welcome development, some question whether this goes far enough.

Questions were asked about how accountability is going to be translated into a reality at the national level and what will be the mechanisms for this. As membership of the new organisation is voluntary, the vast majority of NGOs, UN agencies and government action will remain unregulated. "Donors need to use the power of the purse for greater beneficiary accountability," says Ken Guinta from Interaction, a network of 160 US NGOs. Vincent Cochetel of UNHCR pointed out that "the principal gap which remains is for effective complaints mechanisms. Even after the West Africa experience such mechanisms have only been instituted in a few countries. Fear of retaliation and lack of confidentiality are preventing people from speaking up." The need for transparency in the new organisation was highlighted. Brendon Gormley of the Disasters Emergency Committee asked, "how open and honest are we prepared to be..? The discussions about accountability at

DEC only became real when we agreed that evaluations would be independent and public...."

Humanitarian organisations are not always the best ones to speak on behalf of the victims. As one observer concluded, "few organisations spoke up for the victims of the West Africa scandal. Even those that did speak did not do so as stridently as the victims would have done themselves. The clear gap remains for a truly independent watchdog to monitor and hold to account all humanitarian actors."

For full text of presentations made at the February 2003 conference, see: www.happgeneva.org/conf-prestns.htm

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International rule of law: comment on Iraq

by Dr Agnes Hurwitz,

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The decision to go to war in Iraq has challenged the most fundamental principles of the current international system. Since the end of WWII, states have agreed to prohibit the use of force in their international relations. Two exceptions are granted under the UN Charter: the exercise of the right to self-defence or the authorisation of the Security Council under Chapter VII. The US and the UK failed to receive the explicit endorsement of the Security Council before sending troops into Iraq. With regard to the former exception, the doctrine of pre-emptive strike advocated by the US administration broadens the concept of self-defence in a manner which is inconsistent with the Charter.

While the conflict seems to be reaching its conclusion, many of the post-war discussions will be tainted by the controversy surrounding the lawfulness of intervention. One of these issues concerns the involvement of the UN in the reconstruction of Iraq. The UN has had extensive experience in peace building and in the establishment of transitional civil administrations, such as in Kosovo and East Timor. Although the UN has faced difficulties in exercising wide administrative responsibilities,¹ it is currently the only organisation able to lead this type of operation without raising concerns of so-called 'imperialistic colonialism'.

International legality is of fundamental importance for the legitimacy of post-war operations. The major powers represented in the Security Council will have to find an acceptable compromise regarding the role of the UN. For France, Germany and Russia, which opposed the war, the objective is to entrust to the greatest extent possible the reconstruction of Iraq to

the UN. The US-led coalition is, on the other hand, faced with a dilemma. The US administration wants to be in charge of the post-war reconstruction. It plans to create an 'Office of reconstruction and humanitarian assistance' and will appoint the members of an Iraqi interim authority. It has reluctantly accepted a limited role for the UN, consisting for the most part in the provision of humanitarian aid. However, it would in any case need the adoption of a UN Security Council Resolution if it wants to secure both political and financial support from the rest of the international community. The President of the World Bank has declared that, since the Bank only deals with recognised governments, it would need a UN mandate before implementing its programmes.²

As long as the US and the UK occupy Iraq – that is, exercise actual authority over the territory – they remain bound by the relevant provisions of the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land and the 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War. Shashi Tharoor, UN Under-Secretary General, noted that "occupying powers have no rights under the Geneva Convention to transform the society or the polity or to exploit its economic resources or anything of that sort."³ In addition, it is debatable whether the repatriation of more than half a million Iraqi refugees can take place if the occupation continues. According to UNHCR standards, return should be conditional upon guarantees of physical, material and legal safety for the returnees: in other words, the restoration of full national protection. Since occupation cannot be regarded as conferring state authority upon the occupying power, it might be argued

that the recognition by the international community of an independent Iraqi government capable of exercising full control over its territory should be a minimum prerequisite to the repatriation of refugees.

The latest developments of the Iraqi crisis show the essential role that the law must play in the conduct of international relations. The US and the UK have been able to win a war that clearly violated the law of nations; they might not win the peace unless they comply with fundamental rules of international law. It is to be hoped that in light of the post-war situation the US-led coalition will come to rediscover the eminence of the international rule of law.

1. See the Comprehensive Review of the Whole Question of Peacekeeping Operations, UN Doc. A/5/305, 21 August 2000.

2. 'US to press World Bank to play role in Iraq' *Financial Times*, 9 April 2003, p5.

3. 'US and UK focus on legitimacy of interim rule' *Financial Times*, 9 April 2003, p4; see also ICRC Report, 'General Problems in implementing the Fourth Geneva Convention', 27 October 1998, p8.

See also 'Iraq: resources' listed on p55.

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events, please visit
www.rsc.ox.ac.uk

**International Summer School
in Forced Migration 2003**
7-25 July: Oxford, UK

**Southeast Asia Regional
School in Forced Migration**
8-18 December 2003: Bangkok,
Thailand

Forced Migration Online
www.forcedmigration.org



Community services at a cross-roads

by Jeff Crisp

Head, Evaluation and Policy Analysis Unit

The downward trend in funding and staffing of the community services function has reached the point where it has been rendered incapable of achieving its mandate or purpose within the organization... Without a strong financial and intellectual investment in community services as a core function of UNHCR, there is hardly any point in continuing with it at all." That is the stark conclusion of an independent evaluation of UNHCR's community services function, undertaken by a multidisciplinary five-person team engaged by CASA Consulting of Montreal, Canada.

Based on extensive interviews with UNHCR staff members in Geneva, a global questionnaire survey and visits to numerous field locations in Africa, Asia and Eastern Europe, the evaluation argues that the community services function has a significant role

to play in relation to UNHCR's central protection mandate, particularly the protection of refugee children and women.

Community services are also key to identifying and addressing field-level problems before they erupt into international scandals such as that witnessed in relation to the sexual exploitation of refugees by humanitarian and other international personnel in West Africa. And yet the function has been seriously weakened over the past decade.

"When we speak of weakness," says CASA Consulting, "we refer to the declining numbers of community services staff in the field, the wide range of responsibilities they are assigned, and the low level of authority and status of current community services staff." "Many community services staff," the evaluation continues, "have little control over their daily work programmes and do not have the profile, skills or resources required to carry out independent monitoring of UNHCR's implementing partners."

To address this disturbing situation, the evaluation presents a wide-ranging set of recommendations. According to CASA Consulting, UNHCR senior management must redress the neglect and decline of the community services function. Greater recognition must be given to the role that community services plays in addressing the social and community aspects of refugee protection. And UNHCR's efforts on behalf of refugee children and women should be better coordinated with - and even integrated in - its community services activities.

Finally, the evaluation calls upon UNHCR to carry out regular

'situation analyses' in the field, so that the organisation can better identify and address any threats to the well-being of refugees. "Professional community services staff with social science backgrounds and training in social and participatory research techniques are best placed to facilitate situation analysis... For the rationale for situation analysis is directly related to that of the community services function itself: to ensure that all groups and segments of the refugee population have access to appropriate protection, assistance and services."

Recent resources on community services

The following reports can be accessed on-line at www.unhcr.ch/epau/

The community services function in UNHCR: an independent evaluation by CASA Consulting

Review of CORD community services for Congolese refugees in Kigoma Region, Tanzania by Shelly Dick

Review of CORD community services for Angolan refugees in Zambia by Oliver Bakewell

Community services in refugee aid programmes: a critical analysis, 'New Issues in Refugee Research', Working paper no. 82, by Oliver Bakewell

Returnees from Mexico in northern Guatemala.



This is a regular page of news and debate from UNHCR's Evaluation and Policy Analysis Unit (EPAU). For further information, or suggestions regarding this feature, contact Jeff Crisp, head of EPAU. Email CRISP@unhcr.ch



Pilot IDP mapping survey in Armenia

The Government of Armenia estimates that around 70,000 people are internally displaced as a result of the conflict with Azerbaijan over the territory of Nagorno-Karabakh.

More than ten years have passed since the cessation of active hostilities and many IDPs have already found durable solutions through return, local integration or emigration. Yet their plight in general has been largely unaddressed and there is a general lack of knowledge of the scope of the issue and the conditions facing conflict-induced IDPs.

When the Special Representative of the UN Secretary for Internally Displaced Persons, Dr Francis Deng, visited Armenia in 2000, his first recommendation was for a comprehensive survey and needs assessment. The idea of 'mapping' conflict-induced IDPs was endorsed by the Department of Migration and Refugees in the Armenian government and by those international organisations active in the area of forced displacement: UNHCR, OSCE, UNDP, IOM and the Norwegian Refugee Council. The Norwegian Ministry of Foreign Affairs is financing the pilot study.

Gaining an accurate picture of the numbers, living conditions and needs of IDPs in the country is a prerequisite for designing programmes to address their needs. The information to be gathered during the mapping survey includes:

- number and composition (by age, gender, household composition, etc)
- present location
- place of original residence
- desire to return to their original place of residence based on a free and informed choice regarding the conditions in their place of residence

- needs in their present location in order to promote integration plus needs upon return to their original place of residence, including rights to compensation in relation to lost property and occupancy
- legal status and documentation

Beyond providing a picture of the immediate situation of the displaced population, the mapping activity should be one step towards the creation of a nationwide mechanism to monitor the evolution of conditions and needs of conflict-induced IDPs. The survey is also intended to contribute to the international community's efforts to develop a model for international standards in addressing the needs of the internally displaced. In addition, it will contribute to international research on criteria for determining the level of integration of the displaced, the transition from humanitarian to development needs and the termination of the displacement process. This is therefore a very relevant exercise in light of the ongoing international discussion of when internal displacement ends.

The mapping survey is being conducted in two phases. First, 180 conflict-affected villages are being mapped using a set of questionnaires. The first set is completed by the village mayors, who are given training beforehand. The information

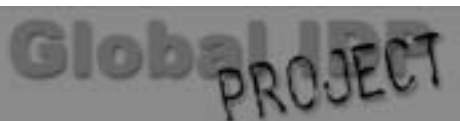
provided will indicate how many individuals there were in the village before the conflict, how many have left, how many have returned, when and for what reason villagers left, what property they owned and whether their land is farmable, where those that left can be reached, etc. This phase was conducted during the autumn of 2002 and the information gathered is now being processed. In the second phase of the survey, the focus will be on those families who have left the villages. The families will be interviewed in their current location, answering many of the same questions that appear in the first questionnaire but also discussing their desire and ability to return home. A third, smaller survey will map the current condition of schools, roads, electrical and water lines and other infrastructure facilities in each conflict-affected village. This survey will be undertaken by the government and will contribute to the planning process for rehabilitation of those conflict-damaged villages that show the greatest potential to host a sustainable IDP return.

The entire survey should be completed by late 2003.

*For further information on NRC's work in Armenia, please contact the Armenia programme coordinator, Marit Mehlum.
Email: marit.mehlum@nrc.no.*

NRC has been building and rehabilitating schools in Armenia.





Displacement only ends with safety and choice

by Andrew Lawday

When displacement ends is a practical concern for agencies charged with helping IDPs. But who can really say when displacement ends? Neither the UN nor governments have been able to agree yet.

Unless the international community can agree when displacement ends, displaced people risk being pressed home to unsafe areas by authorities and agencies swearing that all is well. An end to displacement like this is a type of forced displacement.

Lack of clarity on when displacement ends leaves considerable room for political manipulation. National governments, who have prime responsibility to care for displaced people, frequently impose a premature end to displacement. In Russia, the government is trying to press Chechens home to obviously unsafe areas. And in Angola, the government is pushing large numbers of people home to areas where there is no food and no livelihoods. In Sierra Leone (see p31), the government imposed an end to displacement that excluded

significant numbers of displaced people from assistance. In Rwanda (see p30), the government and authorities changed the criteria to arbitrarily end displacement for thousands.

Elsewhere, governments artificially prolong the problem. In Azerbaijan and Georgia, in an attempt to emphasise their sovereign rights over secessionist regions, authorities have not supported local integration. Even in states that legally recognise displaced people, governments can arbitrarily end that recognition (see p16). IDP status can be withdrawn in Croatia and Georgia simply because a person changes their address - in Azerbaijan and Russia when they find permanent housing. In Bosnia, Colombia and Croatia, IDP status can end when an IDP refuses a state-given solution. In Bosnia and Russia, it ends after a set period of time following return or resettlement.

Without procedures to judge when displacement really ends, agencies may not be able to resist going along with arbitrary government policies, even when those authorities displaced people in the first place and showed obvious disregard for their well-being.

When displacement ends also matters to information agencies like the Global IDP Project. Monitoring IDP crises in 50 conflict countries, we must decide when displacement comes to an end and when to stop monitoring.

Overall, agencies have much to gain from clear criteria for when displacement ends. Realising that an end to displacement is rarely clear-cut, policy makers are wisely developing criteria to reflect how displacement gradually

comes to an end. But any agreement on when displacement ends must emphasise safety, freedom of choice and IDP participation. Unless safe conditions have been established and displaced people choose a solution voluntarily, solutions cannot be considered durable.

Safety must be seen in a broad sense. Obviously, it means the threats that forced people to flee in the first place have been removed. But it also means ensuring that there is adequate protection from threats such as physical attacks, rights abuses and landmines, as well as provision of adequate humanitarian aid and support for essential needs over time.

IDPs must be able to choose solutions to their problems. Ideally, IDPs should be able to choose between return, resettlement or local integration on the basis of impartial information and assured assistance. Return cannot be voluntary, for example, if the government cuts off aid to encourage IDPs to return, as in Russia. Sometimes, safe return to home areas under hostile authorities may have to be enforced by the international community, as in Bosnia.

Finally, IDPs should be involved in all decisions to end their displacement. It is worrying that the voice of displaced people themselves has so far been absent in the international debate about the end of displacement.

Andrew Lawday is advocacy coordinator at the Global IDP Project.

IDP news

IDP news is a weekly summary of news on IDPs in conflicts. It is compiled by the Global IDP Project, based on public information.

Subscribe by email to:
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www.idpproject.org.

The **Global IDP Project** is an international non-profit organisation that monitors internal displacement caused by conflicts.

The IDP Database (www.idpproject.org) provides public information about internal displacement in 50 countries.

The Project is part of the **Norwegian Refugee Council (NRC)**, an organisation that works to provide assistance and protection to refugees and displaced people in Africa, Asia, Europe and the Americas. NRC was founded in 1946 in Oslo.

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conferences

Reports

Breaking new ground: the role of judges in protecting refugees in the Arab World

January 2003 : Cairo

Apart from Palestinian issues, little is known about refugees in the countries of the Arab League. Only now is active research being undertaken to fill in the gaps in knowledge about displacement in the region.

In January 2003 the first event took place to encourage critical discussion of refugee issues, legislation and attitudes. A Seminar for Judges and Lawyers from Arab League Countries on Refugee and Human Rights was held at the American University in Cairo, co-organised by the Forced Migration and Refugee Studies Programme (FMRS) at AUC (www.aucegypt.edu/academic/fmrs), the Arab Centre for the Independence of the Judiciary and Legal Profession (ACI-JLP), and the International Association of Refugee Law Judges (IARLJ) (www.iarlj.nl).

Most Arab countries have constitutional guarantees of the right to asylum and many include protection against *refoulement* and/or extradition. Most, however, have not become parties to either the 1951 UN Convention on Refugees nor the 1967 Protocol.

Only Algeria, Djibouti, Iraq, Morocco, Somalia, Sudan and Yemen have enacted domestic legislation to regulate the refugee status determination process. Provisions relating to asylum in domestic law in Lebanon have existed since 1962 but implementation has been frozen since 1975. With the exception of Algeria, Sudan, Syria, Iraq and Morocco, local or regional offices of UNHCR conduct refugee status determination on behalf of the governments. Generally in Arab states refugees lack access to the courts or any other independent mechanism for appeal and judicial review of procedures.

The seminar brought together over 75 judges and lawyers from 16 of the 22

Arab League member states. Presentations from the International Association of Refugee Law Judges provided an opportunity for judges and lawyers to increase their knowledge of refugee law and refugee issues and to share experiences. Most participants admitted their lack of knowledge about the refugee situation in their own countries. They were shocked to learn the extent of discrimination faced by Palestinian refugees in Egypt and Jordan.

The conference called on Arab League states to:

- assume their international responsibilities with regard to the protection of refugees
- sign international instruments dealing with the protection of refugees and enact national legislation
- abide by their obligations under the 1965 Casablanca Protocol to guarantee Palestinians the same rights as nationals
- recognise Palestinian refugees' right of return and provide full human rights to these refugees in their host countries until they are able to do so

A follow-up seminar and in-country training sessions are planned in order to sustain momentum. *For more information and presentations from the seminar, see: www.aucegypt.edu/academic/fmrs.*

1st Forced Migration Student Conference

22 February 2003 : Oxford

Over 100 students from the UK, Europe and US attended this one-day conference in Oxford. Conceived through a partnership between the Refugee Studies Centre, University of Warwick-CRER, ICAR, University of East London and UNHCR, the conference provided a forum for current students to share their research and experience with their peers. The day was structured around four panel discussions, with 13 postgraduates presenting their work. The panel themes were: i) emerging asylum policy: European and global perspectives,

ii) debating different faces of the integration process, iii) representing refugees: creating the 'other' and iv) exploring the landscape of refugee women's experience. It is hoped that this conference will become an annual event. The organisers would like to thank the Oppenheimer Fund (Oxford) and DFID (CHAD) for their generous financial assistance.

Forthcoming

Reproductive Health from Disaster to Development

7-8 October 2003 : Brussels

This conference will focus on applied research, programme findings and use of data to improve reproductive health programmes serving populations in crisis throughout the world. Organised by the Reproductive Health for Refugees Consortium with UNFPA and UNHCR.

Conference topics:

- Applied research and programme findings on family planning, STI/HIV/AIDS, gender-based violence and safe motherhood among women, men and adolescents affected by armed conflict.
- Evidence of successful models of service delivery in the emergency phase, in stable settings and in post-conflict re-development efforts.
- Collection and use of data for needs assessments, programme monitoring/evaluation and programme management.

Registration fee: \$150. A limited number of scholarships may be available. Updates are available at www.rhrc.org

Contact: info@rhrc.org or RHRC, HDPPH, Columbia University, 60 Haven Avenue, B2, New York, NY 10032, USA.

If you would like to publicise one of your organisation's publications or if you would like to recommend a publication for our publications section, please send us full details - and, preferably, a copy or cover scan.

publications

Taking Refugees for a Ride? The Politics of Refugee Return to Afghanistan

by David Turton and Peter Marsden.
Afghanistan Research and Evaluation
Unit. 2003. Free and online at
www.areu.org.pk/

The authors question the international donor-driven policy of facilitating the massive return of Afghan refugees to a country still in the grips of a devastating drought, political instability and weak government institutions unable to cope with the returnees. The report urges donors to help slow down the pace of repatriation by increasing support to refugee programmes in neighbouring Pakistan and Iran and by increasing support for UNHCR's protection work in these countries. The authors also call for an expansion of the International Security Assistance Force to all regions of Afghanistan and for an increase in the amount of reconstruction and emergency aid pledged and delivered to the country. Without increased security and the ability to earn a living in Afghanistan, the authors argue, most refugees would be better off staying in neighbouring countries for the time being.

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Seminar report: Internal Displacement in Southern Sudan

The Brookings Institution-SAIS Project
on Internal Displacement. Feb 2003.

A seminar was held in November 2002 in Rumbek to promote greater attention to the needs of an estimated 2 million IDPs living in areas controlled by the Sudan People's Liberation Movement/Army (SPLM/A) and the Sudan People's Democratic Front (SPDF) – and to increase the accountability of non-state actors. At the seminar, Elijah Malok, Executive Director of the Sudan Relief and Rehabilitation Association, the relief wing of the SPLM/A, presented a draft policy to address the needs of IDPs in areas under their control. Mr Malok undertook to promote the formal adoption of this policy by the SPLM/A leadership. The report contains current information on the situation of IDPs in southern Sudan, the full text of the SPLM/A draft policy, and statements by Mr Malok and other participants.

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The report is also available at
[www.brook.edu/fp/projects/idp/
idp.htm](http://www.brook.edu/fp/projects/idp/idp.htm)

The Elephant, the Squirrel and the Eagle

by Danesh Jayatilaka. £5.00/\$7.00.

This is a storybook about displacement and conflict resolution, focusing on an animal community confronting conflict and displacement and the steps they take to resolve their predicament. The book touches upon a range of issues and subjects deemed critical at times of war-related violence. The reader is encouraged to digest the essence of the story, then reflect and relate them to real life events. Easy reading with colour illustrations. The author was the Project Coordinating Officer for the Sri Lanka IDP Protection and Assistance Guiding Principles on Internal Displacement Programme. He wrote the story for use as a training tool but has published it personally.

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Displaced children
outside Nasariyah
in a temporary
housing camp, Iraq,
March 2003.

Iraq: resources

UNHCR news and updates:
www.unhcr.ch/cgi-bin/texis/vtx/iraq?page=home

Human Rights Watch documents:
www.hrw.org/campaigns/iraq/

ODI's Humanitarian Policy Group briefing note on key humanitarian policy issues in the context of the war in Iraq:
www.odi.org.uk/hpg/papers/briefing_note_april2003.pdf

Harvard Program on Humanitarian Policy and Conflict Research briefing paper on the application of International Humanitarian Law in Iraq:
www.ihlresearch.org/portal/ihli/10.pdf

Amnesty International on the responsibilities of occupying powers: <http://web.amnesty.org/library/index/eng-mde140892003>

See also www.fmreview.org/4DIraq.htm for FMR's extensive list of links relating to Iraq.



In the vacuum of sovereignty: the international challenge of internal displacement

by Francis M Deng

The differences between the 12 million refugees and the estimated 25 million internally displaced persons (IDPs) around the world, as far as the international community is concerned, is that the former have crossed international borders while the latter have remained within their countries.

Findings from my country missions around the world, in my capacity as Representative of the UN Secretary-General on Internally Displaced Persons, underscore the degree to which the expectation of internal protection by states for IDPs is, for the most part, a myth. The crises of national identity that are often at the root of the causes of displacement also affect the response of governments and relevant non-state actors to the humanitarian consequences of displacement, frequently resulting in vacuums of responsibility in the exercise of state sovereignty.

During missions, I normally ask the displaced persons I visit what messages they would want me to take back to their leaders. In one Latin American country, the response I got was: "Those are not our leaders. In fact, to them, we are criminals and our only crime is that we are poor." In a Central Asian country, the response was: "We have no leaders there. None of our people is there." In an African country, a senior UN official explained to the Prime Minister that their resource capacity to assist refugees in the country was constrained by the need to assist "your people", the internally displaced and other war-affected communities. The Prime Minister's response was, "Those are not my people. In fact, the food you give those people is killing my soldiers."

While not all governments view their displaced populations in the same way, it is true that the opposite is a rare excep-

tion, sometimes dictated by the nature of the displacement and the degree to which the government identifies with its displaced population. Even then, lack of capacity and other political considerations may affect the delivery of protection and assistance.

The core principle that has guided the work of the Representative has been to recognise the inherent nature of the problem of displacement as internal and therefore falling under state sovereignty and to postulate sovereignty positively, as entailing the responsibility to protect and assist citizens in need. This stipulation of sovereignty, which has gained increasing support in the international community, has proven to be a constructive and effective basis for dialogue with governments. The real question, however, is whether governments, in partnership with the international community, are effectively addressing the crisis of internal displacement and meeting the needs of the affected populations.

The international community and the governments concerned have indeed made significant progress in responding to the crisis. It is, however, tragically obvious that the problem remains acute in magnitude and scope. The challenge that the normative principle of sovereignty as responsibility poses for the international community is that it implies accountability. Obviously, the internally displaced themselves - marginalised, excluded, often persecuted - have limited or no capacity to hold their



national authorities accountable. Only the international community has the leverage and clout to persuade governments and other concerned actors to discharge their responsibility or otherwise fill the vacuum of irresponsive sovereignty.

Dr Francis M Deng is the Representative of the UN Secretary-General on Internally Displaced Persons and Co-Director of the Brookings-SAIS Project on Internal Displacement.

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