

Bridging the national and international response to IDPs

by Peter Neussl

This overview article assesses progress towards adapting national policies and legislation to the UN Guiding Principles on Internal Displacement.

The Guiding Principles are based on existing human rights and humanitarian law treaties and conventions. Most countries with an IDP population have ratified them and are therefore bound to respect the rights and freedoms contained therein. Standards provided under the Guiding Principles mostly specify provisions of such treaties and conventions to adapt them to the problems faced by IDPs. Hence, the Guiding Principles should be understood not as a layer of completely new international obligations but as a tool to facilitate the application of existing international legal standards.

*IDP children in
Rhumbek, Sudan*

Dr Francis Deng, the Representative of the UN Secretary-General on Internal Displacement (hereafter 'RSG'), the Senior Inter-Agency Network on Internal Displacement ('Network') and the Office for the Coordination of Humanitarian Affairs' Internal Displacement Unit ('IDP Unit') have been continuously urging states to incorporate the principles into domestic law.

The potential benefits for a nation state of including the Guiding Principles in national legislation are:

- bringing international legal principles closer to ordinary citizens: national law can be invoked more easily than the abstract instruments of international human rights law
- providing for a higher degree of legal certainty and for an environment where 'justice is seen to be done'
- clearly demonstrating to the international community a commitment to apply the highest possible standards and to take national ownership of the process
- encouraging the international community to provide support and assistance for the state's engagement in protecting the rights of the displaced

There is, therefore, no reason why the inclusion of the Guiding Principles into national policies or legislation should not become a standard procedure for all countries with an IDP situation.



Progress to date

The RSG, the Network and the IDP Unit have encouraged individual states to integrate the Guiding Principles and/or the standards contained therein into national policies and legislation. Several models of incorporation have been established.

- Emerging from a 30-year conflict which killed a million people, created 4.1 million IDPs and drove another 400,000 across its borders, **Angola** in 2001 became the first state to incorporate the Guiding Principles into domestic law.¹
- After a ten-year civil war which killed 300,000 people and displaced a similar number, in February 2001 **Burundi** signed a protocol with the UN Humanitarian Coordinator to establish a permanent framework to consult on how to protect IDPs by using the Guiding Principles.²

- In **Sudan**, following workshops facilitated by the RSG and the IDP Unit, both the government and the SPLM indicated their readiness to adopt IDP policies based on the Guiding Principles. In 2002 this process resulted in separate initiatives, one for the government-controlled areas and one for SPLM/A-controlled areas. In January 2004, again at the occasion of a workshop, a draft policy for the whole country was developed

which is presently in the negotiation phase.

- **Colombia**, second only to Sudan in the size of its IDP population, has done much to localise the Guiding Principles. In addition to a 1997 IDP law, Colombia's Constitutional Court has issued decisions interpreting the legal rights of the displaced on the basis of the Guiding Principles. Based on the Court's decisions,³ a presidential directive in October 2001 placed the Principles on the same level as the national constitution.
- **Uganda**, coping with armed conflicts which have left some 830,000 displaced, started working with the IDP Unit in 2002 to develop policy derived from the Guiding Principles. The policy addresses all phases of the cycle of displacement and clearly allocates implementation responsibilities to domestic institutional structures and establishes modalities for cooperation with the UN and other

international humanitarian actors.

- Since the end of the **Kosovo** crisis in 1999 some 200,000 Kosovars remain displaced in Serbia, with a further 30,000 in Montenegro and about 5,000 in Kosovo. Workshops convened by the IDP Unit have created momentum to establish an integrated IDP policy based on the Guiding Principles which will include obligations to provide IDPs with shelter, identity cards and social and health services and to enable IDPs to opt either for return to Kosovo or for resettlement elsewhere in Serbia.
- Since the 1995 Dayton Agreement brought an end to the ethnic cleansing which created over a million IDPs in **Bosnia and Herzegovina**, measures to re-establish a multi-ethnic society have moved forward. Although the Guiding Principles have not yet been legally established, some elements such as the respect of individual IDPs' specific human rights and in particular non-discrimination (eg. in property restitution, the issuance of identity documents and employment practices) have been included in the new constitution. Further constitutional and institutional mechanisms to help so-called minority returns have been established in the Entities of Bosnia and Herzegovina. More than half those displaced have returned. The majority have gone back to areas where they are in a minority.

Regional approaches also bearing fruit

In May 2000 a workshop in Tbilisi, Georgia, worked to promote more effective solutions to the plight of IDPs in the South Caucasus. It was initiated by the RSG and co-sponsored by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE), the Brookings-SAIS Project on Internal Displacement and the Norwegian Refugee Council. In February 2002 ODIHR, the Brookings Institution and the Georgian Young Lawyers Association convened a follow-up roundtable on the extent to which Georgian legislation has come into compliance with the Guiding Principles.⁴

In 2003, member states of the Intergovernmental Authority for Development (IGAD) - Djibouti, Eritrea, Ethiopia, Kenya, Somalia,

Sudan and Uganda - convened the first regional IDP conference. The resultant Khartoum Declaration on Internally Displaced Persons in the IGAD Sub-Region notes that the Guiding Principles are a useful tool for developing and evaluating national policies and legislation on IDPs, and calls for the establishment of a unit on forced displacement within the IGAD Secretariat to collect data on displacement in the region, disseminate the Guiding Principles, provide technical assistance to member states, follow up on the recommendations made at the meeting and explore further sub-regional cooperation on displacement issues.

The Rotterdam Declaration, a statement made in July 2003 by the Parliamentary Assembly of the Office for Security and Cooperation in Europe (OSCE), contains several IDP clauses. It stipulates that OSCE states should not forcibly return IDPs and urges them to take steps to prevent internal displacement, find solutions to promote return and guarantee the rights of IDPs to have property restored and to be adequately housed in the meantime. The December 2003 OSCE Ministerial Council Decision refers to the Guiding Principles as a useful framework for the OSCE and the participating states.

Conclusion

These examples illustrate the momentum which has been created to encourage local and national authorities to focus on the needs of IDPs. The Guiding Principles have moved beyond an advocacy tool to attract the attention of donors towards a common platform for national and international action taken on behalf of the internally displaced.

However, cultural differences, divergent perceptions of human rights policy and implementation mechanisms, historic backgrounds, conflict and natural disasters are among the factors which could thwart further progress. The establishment of IDP policies or legislation must therefore be seen as complementing efforts by governments and the international community to establish

effective parameters for addressing country-specific political, legal and economic aspects.

Regional efforts can help build common understandings to achieve the standards set out in the Guiding Principles. The role played by the Council of Europe, the OSCE and the European Union to resolve displacement problems and re-establish economic growth could serve as a spur to regional efforts in other parts of the world.

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Email: neussl@un.org. The views expressed in this article are strictly personal and do not represent those of the UN.

1. For analysis of Angola's integration of the Guiding Principles, see 'IDP protection in Angola: has momentum been lost?' by Kamia Carvalho, FMR16, pp31-33, www.fmreview.org/FMRpdfs/FMR16/fmr16.10.pdf

2. For further information on Burundi's IDP consultation framework, see: Tullio Santini, 'Addressing the protection gap: the Framework for Consultation on IDPs in Burundi', FMR15, pp. 43-46, www.fmreview.org/FMRpdfs/FMR15/fmr15.full.pdf

3. The Court called upon the President to further develop and regulate existing legislation in order to better define the government agencies' responsibilities. The Guiding Principles, said the Court, should serve as a parameter in this respect. See also the website of the Global IDP Project: www.db.idp-project.org/Sites/idpSurvey.nsf/wViewCountries/BB9217BDF36DB8E1C1256BD4006A1F3C

4. See also Roberta Cohen, Walter Kalin and Erin Mooney (eds) 'The Guiding Principles on Internal Displacement and the Law of the South Caucasus - Georgia, Armenia, Azerbaijan', Studies in Transitional Legal Policy - No. 34 (2003).

IDPs in Camacupa camp, Angola

