

Natural disasters and IDPs' rights

by Walter Kälin

In the understandable rush to provide assistance to the survivors of the tsunami, insufficient attention has been devoted to protecting the human rights of those forcibly displaced by the disaster.

Protection concerns include access to assistance, discrimination in aid provision, enforced relocation, sexual and gender-based violence, recruitment of children into fighting forces, loss of documentation, safe and voluntary return or resettlement and issues of property restitution. The more the tsunami-affected countries move from relief to reconstruction, the greater the need to address human rights problems.

Experience from other natural disasters teaches us that there is a serious risk of human rights violations when the displaced cannot return to their homes or find new ones after some weeks or months. In the context of natural disasters, discrimination and violations of economic, social and cultural rights can become more entrenched the longer displacement lasts. Often, these violations are not consciously planned and instigated but result from inappropriate policies. They could, therefore, be easily avoided if the relevant human rights guarantees were taken into account from the outset.

The Guiding Principles on Internal Displacement¹ provide the normative framework for addressing human rights challenges in situations of disaster-induced displacement. Recognising that persons forced to leave their homes share many common types of vulnerability regardless of the underlying reasons for their displacement, the Principles use a broad definition of 'internally displaced persons' as persons 'forced or obliged to flee or leave their homes or places of habitual residence' for reasons which include, besides conflict and civil strife, 'natural disaster'.

Typical post-natural disaster human rights challenges

Access to assistance: IDPs have the right to request and to receive pro-

tection and assistance from national authorities. States have in general been willing to respond quickly in providing humanitarian assistance to tsunami-affected populations, and those states needing assistance from abroad did so in collaboration with the international community. However, governments must not block access to those in need when they themselves are not in a position to provide adequate assistance. Restrictions on the delivery of aid, such as excessive delays to obtain the necessary permits to reach affected populations, should be avoided.

Non-discrimination: After natural disasters, discrimination may arise in the distribution of humanitarian and reintegration assistance and in decisions regarding relocation and resettlement. As affirmed in the Guiding Principles, assistance must be provided in accordance with the long-established principles of impartiality and neutrality, without discrimination on the basis of race, ethnicity, religion or caste or privileging those uprooted by a natural disaster over those displaced by conflict. Inequities in aid distribution not only violate humanitarian principles but also risk creating tensions which can threaten the security of IDPs and complicate their integration as well as frustrate moves towards national reconciliation.

Protection of women and children: The Guiding Principles call for special attention to the needs of women and children. They experience increased vulnerability to sexual and gender-based violence, especially in camps, where they risk higher levels of domestic violence. When food is not delivered directly to women and when they are excluded from camp management and from the design of relief and reintegration plans, women's vulnerability to sexual exploitation and abuse increases dramatically. Women also have special needs as regards access to health services and

in the area of reproductive health. Children who have lost their homes and families are particularly at risk of military recruitment.

Trafficking: This is another serious risk that is heightened when people are displaced, families separated, children orphaned and livelihoods destroyed.

Access to education: Prompt return to school after a natural disaster is important to minimise disruption to the education to which displaced children are entitled and which is also critical for their psychosocial well-being. School attendance can reduce children's exposure to risks including trafficking and military recruitment. Access to education for non-displaced as well as IDP children will also be constrained where IDPs are sheltered in school buildings. Resettling IDPs to more appropriate temporary accommodation will open opportunities for educational access not only for IDPs but also for children from the broader community.

Loss of documentation: Lack of documents can lead to denial of access to health, education and other essential public services as well as to mechanisms to seek property restitution or compensation. Obtaining replacement documentation can be difficult and time-consuming but is something to which IDPs are entitled.

Participation of IDPs: IDPs can find themselves excluded from decision making, for instance, about the location and layout of camps and settlements, the manner in which aid is distributed, the type of food and other items supplied and other matters central to their daily lives. This can heighten the sense of helplessness inflicted by a natural disaster, undermine the effectiveness of humanitarian assistance and even put IDPs' physical security at risk, in particular that of women.

Voluntary return and resettlement: After the emergency stage of a disaster is over, displaced persons will usually require assistance to rebuild their lives. National authorities have

the primary duty and responsibility to facilitate this by establishing the conditions, as well as providing the means, for IDPs to return voluntarily, in safety and dignity to their places of origin or to resettle in another part of the country and to facilitate their reintegration. In addition to rebuilding homes and other infrastructure, this may include assistance to enable the displaced to re-establish previous livelihoods (e.g. rehabilitating damaged agricultural land, business assets and fishing boats) or providing the displaced with training and assistance for developing new sources of income.

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After a disaster, it may be that governments wish to designate certain areas as 'buffer zones' or 'exclusion zones' in which reconstruction is prohibited. Such decisions have implications for IDPs' freedom of movement and, in some instances, for property rights and their ability to make a living. Where the authorities determine that exclusion zones legitimately should be enforced, such decisions must be taken in close consultation with the displaced, who should receive compensation for property and land lost as a result as well as assistance in relocating and re-establishing their livelihoods and residence elsewhere. It is essential that such decisions do not discriminate against certain ethnic, religious or other groups or among persons displaced for different causes, such as in cases where natural disaster strikes areas with existing displaced populations as a result of armed conflict or civil strife.

On the other hand, IDPs may choose not to return to their original homes, particularly if their displacement is protracted and they have begun rebuilding their lives elsewhere. Authorities are sometimes anxious to promote return as a symbol of normalisation after the chaos brought on by a disaster. However, they should respect IDPs' right to choose whether to return to their place of origin or to resettle elsewhere, and in either case should assist them to reintegrate.

Property issues: Property issues may pose especially complex problems particularly where a natural disaster has wiped out landmarks used for demarcation and where residents may not have had formal evidence of land ownership in the first place or records have been destroyed. When regulations on registration and inheritance discriminate against women they find it hard to regain property, especially when their husbands have been killed. Experience has shown that the designation or establishment of a dedicated administrative body to handle property claims with a mandate for mediation, adjudication (subject to appeal to courts) and flexible types of remedies is the most effective way of handling such large-scale property

issues. Addressing the property issues resulting from displacement crises can also be an opportunity to address any long-standing inequities or inefficiencies in registration and cadastral schemes generally as well as to modify laws and policies to ensure that customary rights and non-traditional forms of ownership evidence are recognised.

Conclusion

When governments, international agencies and NGOs develop and implement programmes of reconstruction and reintegration for IDPs they must seek equitable solutions in accordance with applicable human rights requirements. It is no less important in the context of natural disasters than it is in cases of displacement by conflict to examine and address situations of displacement through a 'protection lens'. During my working visit to a number of tsunami-affected states there was a positive response concerning the need for a human rights based approach in developing and implementing a response to natural disasters.

It is important that:

- recovery and reconstruction efforts in the tsunami-affected region and in other disaster-affected parts of the world be informed by a human rights based approach

- when governments formulate national reconstruction and reintegration programmes the Guiding Principles should be taken into account; they provide guidance not only in situations of armed conflict but are equally applicable in situations of natural disasters.
- donors become more aware of their responsibility to provide assistance in ways that do not discriminate against people displaced due to prior conflicts or of different ethnic, religious or social groups, or on grounds of gender
- the displaced, particularly women, should be included in any decisions for the planning and management of relocation, distribution of humanitarian assistance and finding durable solutions to displacement
- national Human Rights Commissions be encouraged and supported to monitor the situation of IDPs and develop a common methodology for doing so
- the UN High Commissioner for Human Rights and the Office for the Coordination of Humanitarian Affairs (OCHA) should jointly develop guidelines on human rights for situations of natural disasters in order to provide practical operational guidance to IASC (Inter-Agency Standing Committee) members on the ground.

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In March 2005, Walter Kälin undertook a working visit to Asia, the report of which is available at: www.brookings.edu/dybdocroot/fp/projects/idp/20050227_tsunami.pdf. For information on the Project see: www.brook.edu/fp/projects/idp/idp.htm or email: brookings-bern@brookings.edu

1. Available in English, Sinhala, Tamil and other languages at: www.unhcr.ch/html/menu2/7/b/principles_lang.htm and in Bahasa Indonesia at: www.reliefweb.int/ocha_ol/pub/idp_gp/idp-Indonesia