

FMR – GP10

TEN YEARS OF THE GUIDING PRINCIPLES

33

UNHCR and the Guiding Principles

Khassim Diagne and Hannah Entwisle

UNHCR today works with governments and other humanitarian actors in 28 countries to protect nearly 14 million IDPs.

UNHCR has worked to protect and assist IDPs since the mid 1970s. Initially, the UN system divided responsibility for protecting and assisting IDPs on an ad hoc basis. In 2003, it sought to improve its response through an inter-agency ‘collaborative approach’, which allocated responsibilities informally. In 2005, this approach was refined in an effort to increase predictability and accountability, particularly in responding to internal displacement. Agencies were assigned leadership responsibilities under the ‘cluster approach’. UNHCR formally assumed leadership responsibilities for three clusters: protection, camp coordination and camp management, and emergency shelter.

UNHCR views the Guiding Principles as more than a simple compilation and restatement of legal rules. UNHCR’s 2007 IDP Policy Framework and Implementation Strategy¹ affirms their relevance, stating that they will be incorporated into the Office’s protection and human rights activities for IDPs. The provisional

edition of the inter-agency *Handbook for the Protection of Internally Displaced Persons*,² issued in December 2007, proposes several protection activities supported by the Principles, including strategic development, protection monitoring, and assessing IDPs’ enjoyment of rights. The *Handbook* also shows how the Principles can help foster an inter-agency understanding of what protection means in an operational context.

The Principles have played a significant role in shaping UNHCR’s operational responses for IDPs. Their use in programming and advocacy has arguably helped bolster their credibility and influence as a relevant international legal instrument. This article highlights examples of this symbiotic relationship between UNHCR and the Principles and how this has generated concrete benefits to IDPs over the past decade. As the international humanitarian and legal environment evolves to recognise the persuasiveness of the Principles, they are increasingly becoming an operational protection

tool for UNHCR, governments and IDPs themselves.

In the Democratic Republic of the Congo, UNHCR has emphasised the particular importance of education about the Principles when working with survivors of sexual and gender-based violence, thus supporting them to assert their rights for compensation and justice. In the Central African Republic, Timor-Leste and Sudan, UNHCR operations have stressed the importance of the Principles as a tool to explain to national and local authorities their responsibilities towards IDPs.

Elements from the Principles have also been incorporated into national and state level frameworks. One example, deriving directly from Principle 6 on protection from arbitrary displacement, is the Khartoum State Principles on Relocation, signed by the state authorities and the UN in April 2007.³ UNHCR offices have likewise supported efforts to incorporate the Principles into regional documents and legal instruments, such as the draft African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.

Colombia

Colombia's extensive legal framework upholding the rights of IDPs is an oft-cited example of the incorporation of the Principles into domestic law. Colombia's primary displacement legislation (Law No. 387 of 1997) was enacted before the adoption of the Principles but the Colombian authorities referred to the preparatory work done by former Representative of the Secretary-General on Internal Displacement, Francis Deng, when developing the country's normative framework. In 2001, the Constitutional Court decided to incorporate the Principles into the 'Constitutional Block', thereby making the Principles binding in national law. As a result, a wide range of public policies now reflect the Principles as a fundamental basis for the institutional response to internal displacement.

There is, however, a considerable gap between Colombia's comprehensive legal framework and its implementation at national and departmental levels. The Constitutional Court sought to address this discrepancy in May 2004 with a landmark judgment (T-025), within which several orders were issued requesting the government to fulfil its responsibilities as regards the displacement crisis.⁴

UNHCR's programmes in Colombia illustrate the impact the Principles can have in societies where there is a solid legal infrastructure to assimilate them. When discussing the role of humanitarian assistance with government authorities, UNHCR relies on the Principles to explain the necessity for impartiality and neutrality and the non-discriminatory nature of humanitarian action. National NGOs and associations working on displacement issues have played a key role in disseminating and applying the Principles. IDP advocates rely on them when calling for IDPs' rights to be enforced and refer to them in reports to the Colombian Constitutional Court. A recently signed agreement between the Ministry of Agriculture and UNHCR gives IDPs the possibility of protecting abandoned lands and benefiting from new initiatives to restore their property rights. The Principles are also routinely used by the group of experts



within the National Commission of Reparation and Reconciliation, which has been tasked with creating a national reparations plan.

Serbia and Kosovo

Nine years after the end of the conflict in Kosovo, the situation of the 206,000 IDPs in Serbia remains delicate. There is no institutional responsibility for their protection and UNHCR statistics show that only 18,060 members of minority communities have returned to Kosovo since 1999. Sustainable returns have been hindered by security constraints, lack of political will, complicated return procedures, restrictions on freedom of movement, destruction of property, an ineffective property restitution system and limited access to services.

Ensuring the informed, voluntary and dignified return of IDPs is an ongoing challenge in Serbia. UNHCR has conducted various cross-boundary activities over the years to inform IDPs about conditions in their place of origin and developments in Kosovo. It has also provided free legal assistance and advice on how to pursue property restitution. The UN Mission in Kosovo (UNMIK)⁵ has also released a *Manual on Returns*

which incorporates elements of the Principles. Even though the right to freedom of movement and the ability to choose one's residence may be acknowledged, financial and political constraints have meant that UNMIK and the Serbian authorities have struggled to fully apply these principles. The Principles provided the framework for the 'Analysis of the Situation of Internally Displaced Persons from Kosovo in Serbia: Law and Practice', one of the main advocacy and programming tools used by UN agencies and NGOs in Serbia.⁶

Sri Lanka

The Principles form the basis of all UNHCR awareness raising, training activities, protection monitoring and advocacy in Sri Lanka, including with IDPs and host communities. Education programmes have made non-displaced children more aware of the challenges facing IDP children. The Principles have also been used to advocate for more active inclusion of IDP pupils in school life. In one situation, this even prompted a class to request a student exchange trip so they could better understand the living conditions of displaced peers. The Principles are used on a day-to-

Children attend a UNHCR-funded primary school in the permanent relocation village of Tharanikulum, in Vavuniya, Sri Lanka.



UNHCR/R. Chalesani

day basis to help deal with concerns arising from protection monitoring. In another case, UNHCR staff met with school principals when it was discovered IDP children were being denied entry into schools because of overcrowding. Working with the principal, local government and the IDP community, additional teachers and resources were found to accommodate the displaced children.

The Principles have influenced national peacebuilding efforts, including a tool developed by UNHCR (Confidence Building and Stabilisation Measures for IDPs in the North and East⁷) and approved by the Inter-Ministerial Committee on Human Rights in October 2006. It promotes co-existence and peacebuilding activities between communities and among communities, civil administration, armed forces and law enforcement agencies. It highlights the need to restore essential infrastructure and services in return areas and frames UNHCR's protection work.

Northern Uganda

The Principles constitute the key reference for the National Policy for IDPs adopted by the

Ugandan government in 2004. The Policy commits the government to protecting its citizens against arbitrary displacement, guarantees their rights during displacement and promotes voluntary durable solutions. The National IDP Policy provides UNHCR with a strong basis upon which to build its programmes to strengthen protection monitoring, develop government and civil society capacity, facilitate the achievement of durable solutions, and support camp phase-out and closure processes. UNHCR uses the Principles alongside the National IDP Policy in all training activities, including with the police. Principle 14 on the right to freedom of movement gained particular significance in 2006 when the protection cluster identified government restrictions on IDPs moving in and out of camps as a key protection concern. A large-scale freedom of movement advocacy campaign targeted the national government, local authorities and the army. Cluster members brought international attention to the devastating protection problems for IDPs resulting from confinement in camps, including restricting IDPs from pursuing livelihood opportunities. This campaign and the improved

security situation as a result of the ceasefire with the Lord's Resistance Army meant the government has now lifted all restrictions on freedom of movement in camps and return areas, paving the way for IDPs to voluntarily return or locally integrate.

The next decade and beyond

This article has given some concrete examples illustrating how UNHCR's use of the Principles in its day-to-day operations contributes not only to improved IDP protection but also to strengthening the Principles as a legal, advocacy and planning tool. The success of the Principles is a testament to the international efforts of NGOs, the UN, governments and IDPs alike.

While the Principles have made a significant impact, further guidance is needed to determine when internal displacement can be said to have ended, to address protracted displacement situations, and to ensure IDPs are adequately included in peacebuilding activities. Other challenges include the need to improve protection and assistance activities – and find solutions – in urban environments where it can be very difficult to distinguish displaced populations. Further reflection is also required on forced displacement due to climate change, and whether this can be adequately addressed within the current legal frameworks and operational institutions, or whether new legal frameworks or institutions may be required. In the years to come, UNHCR will continue to work towards building acceptance of the rights-based approach to internal displacement contained within the Guiding Principles.

Khassim Diagne (diagne@unhcr.org) is a Senior Policy Advisor with UNHCR (www.unhcr.org). Hannah Entwisle (entwisle@un.org) was an IDP Policy Officer with UNHCR until December 2008 and is now a Policy Officer with OCHA's Food Policy Support Team.

1. <http://www.humanitarianreform.org/humanitarianreform/Portals/1/H%20Coordinators/HC%20Oretreat/Day%202/HCRIDPpolicyframework.pdf>
2. See Sources and Resources on p40.
3. <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=SUBSITES&id=47fb81ee2>
4. See Rothing and Romero, 'Measuring the enjoyment of rights in Colombia', FMR30 <http://www.fmreview.org/FMRpdfs/FMR30/64-65.pdf>
5. <http://www.unmikonline.org/>
6. <http://www.unhcr.org/refworld/pdfid/42120e54.pdf>
7. <http://www.unhcr.org/publ/PROTECTION/482af5132.pdf>