Achievements and limitations of the Guiding Principles in Burma

Thailand Burma Border Consortium

While the Guiding Principles have galvanised awareness of and assistance for IDPs in Burma, they have been an ineffective tool for dealing with a predatory military junta.

As FMR’s recent issue on Burma outlined, large-scale internal displacement has been a reality in Burma since squatters were forcibly evicted from Rangoon and relocated into satellite towns in the 1950s. Only since the introduction of the Principles has there been a common framework for protection and assistance of IDPs. The Principles have proven invaluable in promoting awareness about displacement and mobilising assistance to respond to grave needs. This has facilitated understanding of the involuntary nature of displacement in Burma, applying the Principles regardless of whether people are forced to flee conflict, violence or abuse, or obliged to leave by government orders or out of fear.

The Principles’ concern with development-induced displacement has resonated in Burma as state-sponsored development initiatives have often undermined livelihoods and promoted militarisation. By focusing on infrastructure development and commercial agriculture, the junta’s Border Areas Development programme has done little to alleviate poverty in conflict-affected areas. Communities perceived as opposing the state generally bear a disproportionate share of the costs and are denied a fair share of the benefits.

Recognition that “internal displacement may be caused by a combination of coercive and economic factors” has also been important. In Burma much impoverishment and forced migration are due to state-led land confiscation, asset stripping, forced procurement policies, agricultural production quotas, forced labour, arbitrary taxation, extortion and restrictions on access to fields and markets. The compulsory and unavoidable nature of these factors is distinct from the voluntary, profit-oriented ‘pull factors’ more commonly associated with economic migration.

Given the junta’s increasing restrictions on humanitarian space in conflict-affected areas, the Guiding Principles have also helped to mobilise funds for cross-border assistance programmes. They underpin international humanitarian law’s assertion that civilians caught in the cross-fire have a right to assistance and that such assistance should not be considered a threat to national sovereignty. Donors listened when experts advised that cross-border aid into Burma is not only justified in international law but should be strengthened.

The protection dividend of increased awareness in regard to the national authorities fulfilling their obligations...
has been limited. The regime has neither recognised its responsibilities for causing displacement nor the requirement to address its consequences. Despite concessions made in the Irrawaddy Delta after Cyclone Nargis struck in May 2008, restrictions on humanitarian access continue elsewhere in Burma and increasingly frustrate efforts to reach conflict-affected IDPs. The weight of evidence suggests that violations of human rights and humanitarian law in eastern Burma could constitute crimes against humanity.1 International frustration has been reflected in the highly unusual denunciation of the junta by the International Committee of the Red Cross.3

It is now accepted that if national authorities are unable or unwilling to protect against massive atrocities, responsibility for enforcement shifts to the international community.6 This shift is required to increase the leverage of the international community when dealing with recalcitrant rights-abusing regimes such as the Burmese junta. The Guiding Principles have put Burma’s IDPs on the humanitarian agenda but new tools are required to stop violence and abuse and prevent emerging threats from causing further displacement.

This article was written by the Displacement Research Team of the Thailand Burma Border Consortium (www.tbcc.org), a network of 11 international NGOs providing food, shelter and non-food items to refugees and displaced people from Burma.

Protecting IDPs in Europe

Corien Jonker

Over the past decade the 47-member Council of Europe has put a considerable amount of effort into promoting the Guiding Principles.

Eleven of the 47 Council of Europe1 member states have a combined population of approximately 2.5 million IDPs. Alarming, only a few hundred thousand have found a durable solution to their displacement over the past ten years and most of these people have rebuilt their lives elsewhere than their areas of origin. Contrary to all expectations, the number of IDPs in Europe has not fallen significantly. So somewhere, somehow, our efforts and policies have failed, despite international human rights and humanitarian norms becoming increasingly more elaborate.

The Council of Europe has long taken an interest in the issue of displaced persons. Its Parliamentary Assembly has adopted various recommendations and resolutions – on issues such as the education of refugees and IDPs in European countries and the humanitarian situation of displaced populations in Turkey, the Russian Federation and CIS countries, south-eastern Europe and the South Caucasus (and, most recently, Georgia). In 2006, at the instigation of the Parliamentary Assembly’s Committee on Migration, Refugees and Population, the Committee of Ministers of the Council of Europe agreed 13 recommendations on IDPs. These Recommendations2 do more than just re-state the non-binding Guiding Principles. They underline the binding obligations undertaken by Council of Europe member states that go beyond the level of commitments reflected in the Guiding Principles.

Most European states concerned have established domestic normative frameworks for internal displacement since 1998. However, only three countries – Azerbaijan, Georgia and Turkey – have made significant progress in bringing their IDP legislation into line with the provisions of the Guiding Principles. Paradoxically, these are the countries with the least prospect of return of their IDP populations in the near future because of the lack of political solutions. At the same time, the IDP situation has improved best in the Balkans, where there have been internationally negotiated and monitored agreements and where there have been advances in EU integration.

All Council of Europe member states have acceded to the European Convention on Human Rights,3 thus each individual IDP under the jurisprudence of a Council of Europe member state is protected by the ECHR and has the right to appeal to the European Court of Human Rights in Strasbourg. Since the mid-1990s, when Russia, the Balkan and South Caucasus states joined the Council of Europe, the Court of Human Rights has issued several judgments relating to internal displacement in the region. Furthermore, as IDPs remain under the protection of their own country, they are usually entitled to the same rights as any other person. Besides the Convention, there are other Council of Europe instruments that are binding on member states,4 and both the Council of Europe and its Parliamentary Assembly have mechanisms to monitor countries’ obligations under these instruments. Of particular importance is the little known and much under-used protection mechanism provided by the European Social Charter and the revised Social Charter, whereby international NGOs which have participatory status with the Council of Europe and are listed as having standing with the European Committee of Social Rights can submit collective

   3. UN Security Council, Resolution 1674.